(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

SUPREME COURT OF THE UNITED STATES

GERALDINE MILLS, M. D.
Appellant,

v.

STEVE BROWN and JOYCE BROWN
Appellees.

GERALDINE MILLS, M.D.
Appellant,

v.

DEBORAH CINQUEGRANA and BRIAN CINQUEGRANA
Appellees.

On Petition For Writ of Certiorari
To The United States Court of Appeals
for The First Circuit

PETITION FOR A WRIT OF CERTIORARI

August 3, 2006

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QUESTIONS

Was the trial court in error by not allowing Dr Mills to file an amended complaint under Rule 15 (a) as a matter of right

Did the trial court commit a grave error of law in dismissing the subject action under Rule 12 (b) (1) of Federal Rules of Civil Procedure

Did the defendants-appellees act jointly with state official(s) in a conspiracy providing that which is essential to directly violate Dr Mills' Fourteenth Amendment equal protection rights

Did defendants-appellees Brown violate Federal and State laws when tampering with confidential health care information that could be utilized to rule in or out a suspicion of child abuse

Did defendants Brown violate Federal laws by tampering with communications and in particular the confidential doctor-patient interaction

What basis did the Brown defendant-appellees have in conspiracy with state official(s) to rebut against PC-00229 Attorney General Sheldon Whitehouse v. Speedy Oil, Inc. In Providence Superior Court (when defendant-appellees Brown clearly were not qualified to render opinion as to the toxicity of building(s)

Did defendant-appellees Cinquegrana violate Federal HPAA laws (and state laws) regarding the release of confidential health care information

With no basis in reasonable belief, is there any entitlement to immunity

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INTRODUCTORY PARAGRAPH

Appellant, Geraldine Mills, M.D. is appealing from the judgment below as ordered by the United States Court of Appeals For the First Circuit in the case of Geraldine Mills, M.D. v Steven Brown and Joyce Brown, Geraldine Mills, M.D. v. Deborah Cinquegrana and Brian Cinquegrana entered May , 2006. This appeal of that decision is submitted to show that this Honorable United States Supreme Court has jurisdiction of this appeal and that substantial questions are presented.

CITATIONS TO OPINIONS BELOW

The United States Court of Appeals For the First Circuit affirmed the denial of Appellant's (heretofore known as Dr. Mills), appeal from the lower Rhode Island District Court as, " Essentially for the reasons given by the magistrate judge in his report and recommendation, dated April 11, 2005, we affirm the dismissal of plaintiff's claims as time barred."

JURISDICTION

This case falls within this Court's Jurisdiction under 28 U.S.C. 1257(a), offering an ideal vehicle to resolve questions presented. This Court has jurisdiction under " Fourth Cox Category to review state court ruling if 1) "reversal of state court on Federal issue would be preclusive of any further litigation the relevant cause of action," 2) refusal immediately to review state court decision might seriously erode federal policy." Cox Broadcasting Corp v Cohn 420 US 469, 482-83 (1975), for application of this general jurisdiction rule. Petitioner if so favored by this Court would deem the state law causes of action by the District Court of Rhode Island unconstitutional as so applied. Jurisdiction under the Civil Rights Act of 1871, Title 42, Section 1983, Title 28 Section 1331 and 1343 of the United States Code, also applies. A litany

of events resulted in deprivation of substantive, procedural due process of Dr Mills. Actionable misconduct by those so involved deprived Mills of her civil rights. Jurisdiction of state court was invoked under Title VII of the Civil Rights Act of 1964 as amended by Equal Employment Opportunity Act of 1972 U.S.C. 2000 Dr Mills has been denied her procedural, civil, constitutional rights as allowed by the Fourteenth Amendment and denied her appeal. She was not allowed any evidence, leaving the record totally devoid of affirmative evidence necessary to determine the facts on record. Thompson v City of Louisiana 362 U.S. 199 (1960) the Court stated the question was whether disorderly conduct charges "were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment..... whether rests upon any evidence at all." Dr Mills' case is resting on no evidence at all. Washington vs United States 357 US 348 (1958) and Garner v Louisiana 368 US 157, 163 (1961) all reversed because of the"insufficiency of evidence." Unless there is a "....very obvious and exceptional show of error...," this Court may not review.Graver Mfg v Linde Co 336 US 271 (1949). Dr Mills' case is a prime example of such an obvious and exceptional show of error. In further violation of Dr Mills' due process and equal protection was the reference and use of other 'court' proceedings in this case. United States vs Jones 29, F.3d 1549, 1553(11th Cir 1994), "Fed R Evid 201(b) provides a judicially noticed fact that must be one not subject to reasonable dispute in that it is either (1) generally known within territorial jurisdiction of trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Only for limited purpose of recognizing a 'judicial act' that the order represents may a court take notice of another court's order, United States v Garland 991 F.2d 328, 332 (6th Cir 1993). It cannot judicially notice the veracity of allegations in affidavits FDIC v O'Flahaven 857 F.

Supp 154, 157-58 (D.N.H. 1994).

STATEMENT OF THE CASE

This complaint is filed against two parties, parents Brown and parents Cinquegrana (heretofore known as "B" and "C"), both of whom testified as complainants against Appellant (heretofore known as Dr Mills) in a hearing before the Rhode Island Board of Medical Licensure & Discipline. Dr Mills sought RI Superior Court review of the decision of the Board to suspend her medical license. The decision was upheld on November 13, 2003. Petition of Certiorari to RI Supreme Court and all subsequent appeals were arbitrarily denied.

The complaint filed by C pertains to the release of confidential health care information on their two children. Both Federal and State Common Law require that a release form be signed by the patient, parent, or guardian prior to the transfer of this confidential information (Federal HPAA laws and Chapter 5 Section 37.3 of R.I General Laws entitled " Confidentiality of Health Communications and Information Act"). C parents never signed releases forms for their children's medical records to be transferred to a subsequent physician. These forms were mailed to them on September 4, 1998 with their full immunization records attached. From the time written consent is given to a physician, there is allowed thirty days for release of the records. On September 11, 1998, parent mother C called Dr Mills at her office, screaming, " you are preventing the continuity of care of my children." Dr Mills asked her to sign and return the release forms. As stated, this was never done. This was the only complaint the Medical Board gave Dr Mills and did not tender it (mother's handwritten complaint) to Dr Mills until December 12, 1998 (violation of RIGL 5-37). Bruce W. McIntyre of the Medical Board did give Dr Mills a typewritten affidavit which differed in its content from the mother's handwritten complaint. The

typewritten complaint did not refer to release forms. McIntyre aided the mother in preparation of this second document (violation of RIGL). The handwritten complaint reads that the father C never signed release forms at Dr Mills' office (father later signed an affidavit dated December 1, 1998 on Medical Board stationary with McIntyre's signature, that he did sign medical releases at Dr Mills' office)

One year later, parent mother B made a complaint to this same Board alleging Dr Mills' behavior had become "irrational" because Dr Mills believed there were toxins in her building(s). While preparing B's medical records for transfer, Dr Mills noted, (in old records from former Pediatricians), an unusual and rare amount of injuries (at that time about eighteen (18)) to the two oldest of four girls. These old medical records were nearly illegible. Their father is a Rhode Island State Child Abuse Investigator for DCYF. The father's position the mother's personal reports to Dr Mills that much of her older girl's medical records were, " lost in the Navy," along with the following facts, clearly disguised a pattern of injuries of grave concern. [mother stated girls were "accident prone," older girl had apnea but all her birth, infancy, and childhood records were gone because they moved around a lot, mother told all Pediatricians that the oldest girl's apnea records were "lost in Navy" mother described her as having apnea but an otherwise normal birth and infancy]. Almost two (2) years after first seeing these girls, the mother hand delivered the girl's old medical records to Dr Mills. One prior doctor was deceased and the other retired. No information was available from them. They were brought for purpose of getting the oldest girl into a new school which required old immunization records. Being nearly illegible, Dr Mills took the shot records and placed the rest of the information in the back of their medical charts. With the advent of property damage and toxic waste in Dr Mills' building, all records had to be recopied and the old ones stored

in a garage. Only the most recent parts of patient records got recopied (all old records were available, none destroyed).When Dr Mills' brother Attorney Stephen Mills recopied these old records for transfer, the entire files were once again complete as the mother had delivered them to Dr Mills. On September 22, 1999 they were handed to McIntyre at the Board.

While Dr Mills on September 25, 1999 was answering to the unexpected, unusual complaint of mother B, unbeknownst to Dr Mills, this mother on September 29, 1999 was writing a seven (7) page document to McIntyre marked "URGENT" about what she described, " all the discrepancies" in her girl's medical records (not referring to the old doctors' records but only those of Dr Mills). She wrote two pages on daughter Caitlin's record when Dr Mills only saw her two times for sick visits. [Caitlin had not had a well check-up in four years, (11-15 years of age) by Dr Mills or any other doctor. Mother wrote, " Caitlin's meningitis vaccine given by Dr Mills is missing." It is page seven (7) of her medical chart. Mother wrote regarding the oldest girl Sarah's chart, " Bridgeport medical records are missing." No physician including Dr Mills had ever been told about a Bridgeport Hospital. In fact Dr Aspirinio's progress note in Sarah's chart dated 10.18/90 when Sarah was just ten (10) years of age reads, " apnea records never went to Dr Barrett from US Navy."

On September 29, 1999, mother B was alleging to McIntyre at Board that Dr Mills was somehow responsible for missing Bridgeport records. It is now known that on September 29, 1999 B was falsely accusing Dr Mills of hundreds of acts of unprofessional conduct including removing Bridgeport records.

Dr Mills did not learn about this September 29, 1999 document until November 11, 1999 (after receiving her entire file from the Medical Board with the hiring of new counsel Paul Foster). After a four hour review of this file, Mills

contacted Bridgeport Hospital Medical Records and was told that the apnea (NEAR SIDS) records on Sarah DOB 9/23/80 were still on microfiche (Mills made this call at 4:30 AM when she was overcome with shock seeing the false accusations by this mother- especially that these records were never lost in any Navy).

Over a month prior to learning of the existence of Bridgeport records, Mills made a report on October 5, 1999 to the DCYF Hotline regarding a "concern" about these over eighteen (18) injuries on the fifteen year old (15) girl and injuries to her mother and sibling sister then eighteen (18). The Medical Board's McIntyre testified, " it was this last act that led to her temporary suspension," (referring to Dr Mills' suspension of her medical license). He called it, " ominous behavior, unprofessional conduct, simply retaliation against a loving family."

It is now known that even if Dr Mills had not made that call to DCYF on October 5, 1999, she was going to be suspended for parent B's September 29, 1999 allegation that Mills somehow was responsible for the " missing Bridgeport medical records." If Dr Mills had known of this September 29, 1999 letter when she called DCYF on October 5, 1999, Dr Mills would have had even greater concerns about this family.

Dr Mills has spent a good deal of her last finances on attempts to subpoena these "NEAR SIDS" records. A motion to the RI lower court to put a stay on the destruction of these records was denied with reason given, " the court lacked jurisdiction." The same request has been made to the Governor of the State of Connecticut in the hopes that some day a normal procedural investigation may take place. Mills has received the opinions of several internationally known child abuse experts including that of Randall Alexander, M.D. of Morehouse Medial Center Georgia, and Marc Feldman, M.D, a Munchaussen by Proxy expert. They have stated that it would be " rare to find this many injuries in one family, that it was

not unreasonable for Dr Mills to have made this call, and that with an investigation the suspicion of abuse could be ruled in or out." They furthered, " it seems to not only be severe abuse but munchaussen by proxy as well." In 2001, Mills met with her counsel and DCYF personnel where it was agreed that an internal investigation would take place. Dr Carole Jenny of Rhode Island Hospital, a child abuse expert was to have reviewed the girl's medical records. Mills received the report from DCYF of her conclusions. Mills contacted Dr Jenny who has written articles on and studied " apnea and head injuries." Dr Jenny told Mills that she did not review the NEAR SIDS medial records and that this would have been necessary to the investigation. The fifteen (15) year old had a skull fracture just a few years after the older girl had been a NEAR SIDS.

ARGUMENT

The issues are whether there are Federal questions to be raised and does this case satisfy proper jurisdiction in this court. The trial court clearly erred when the trial court dismissed this action for lack of federal-question-subject-matter jurisdiction. In Hawes v. Network Solutions, 337 F.3d 377, 383 (4th Cir. 2003): " .....See Bell v. Hood, 327 U.S. 678,685 (1946) (holding that federal question jurisdiction existed because 'the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another')...." See Steel Co. V. Citizens for Better Environment, 523 U.S. 83, 89 (1998) stating, "...Jurisdiction...is not defeated...by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover'...Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is 'so unsubstantial, implausible, foreclosed by prior decision of this

Court, or otherwise completely devoid of merit as not to involve a federal controversy.'" (Citations omitted). Unless this Court finds that Dr Mills' complaint before the court is 'so unsubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve federal controversy,' " this Court should rule that the trial court does have subject- matter jurisdiction. There is also no heightened pleading standards for civil rights cases. See American Federation of Labor v. Watson 327 U.S. 582, 590 (1946) (" jurisdiction over suits brought under the Civil Rights Act without allegation of any jurisdictional amount"); Columbia Gas Transmission Corp v Drain 191 F.3d 552, 557 (4th Cir 1999) ("federal-question jurisdiction is not limited to cases where federal law creates the cause of action"); Martin v Deirriggi, 985 F.2d 129, 135 (4th Cir 1992) ("[t] he complaint here passes muster under Rule 8 of the Federal Rules of Civil Procedure by providing adequate notice" and "[t]o hold otherwise would be to instigate a rule that a federal statutory cause of action is not pled unless reference to that statute appears in the jurisdictional statement section of the complaint."); and, Ex parte Young, 209 U.S. 123, 143 (1908) where the Supreme Court quoted Chief Justice Marshall from Cohen v Virginia, 19 U.S. 264, 404 (1821) "....We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution..." Accordingly, with the facts in this case, there clearly is federal-question-subject-matter jurisdiction.

Issues are 1) are the defendants state actors, 2) the record below is totally devoid of evidence, 3) the result was deprivation of life, liberty and property as well as due process and equal protection of law. Every decision is not as the court states, " dependent upon conventional local or general common law concepts and doctrines of tort to enforce Plaintiff's purely private rights." Federal HPAA protects individual abuses of

private medical information (not common law), though state laws also govern this. Parents C and McIntyre colluded in violation of Federal Law. C testified, " the man in the blue shirt and red tie helped me write this, " (referring to McIntyre of the Board). It is question for the jury to determine whether there was a " symbiotic relationship." between C and the State involving " sharing of profits," citing Serbalik v Gray 27 F. Supp 2d 127, 132 (N.D. N.Y. 1998). It is question for jury and discovery as to whether there is an elaborate financial or regulatory nexus which compelled defendants to act as they did In Serbalik v Gray the decision reads, " it is settled that the fact that private parties give the police information on which official action is then taken does not by itself convert the private parties into state actors." In the instant case, it is defendants' acts and not merely the giving of information to a state official. One defendant wrote, " you convinced me to write this," and the other defendant testified that the same state official aided her in altering her complaint. This reveals the nexus between these defendants and state official(s).

Dr Mills appeared pro se before the trial court on June 21, 2004 explaining that private parties may in essence conspire with state officials and deprive a United States citizen as Dr Mills of her civil rights, " one is there must be a showing that a private party and a state actor jointly deprived one of their civil rights. That's exactly what was done in this case," and, " ...or are they private parties affiliated with a state official."

Dr Mills raises the matter before the trial court that defendants-appellees acted under color of state law in depriving Dr Mills of her constitutional rights. See Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970), where the Supreme Court of the United States in part reads, " The involvement of a state official in such a conspiracy plainly provides the state action essential to show a direct violation of petitioner's Fourteenth Amendment equal protection rights,

whether or not the actions of the police were officially authorized, or lawful; (Citations omitted.) Moreover, a private party involved in such a conspiracy, even though not an official of the State, can be liable under 1983. 'Private persons, jointly engaged with state officials in the prohibited action, are acting 'under color' of 'law' for purposes of the statute. To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents,' United States v. Price, 383 US. 787, 794, 86 S. Ct. 1152, 1157 (1966)." (Footnote omitted).) See Wagenmann v. Adams, 829 F.2d 196, 209 (1st Cir. 1987), where this Court previously stated:

" Inasmuch as Anderson is and was a private citizen, liability under 42 U.S.C. Sec. 1983 requires a showing that he collogued with state actors-persons acting under color of state law–to deprive the plaintiff of his civil rights. See Dennis v. Sparks, 449, U.S. 24, 27-28, 101 S Ct. 183, 186, 66 L.Ed. 2d 185 (1980) ('Private persons, jointly engaged with state officials in the challenged action, are acting ' under color' of law for purposes of Se. 1983 actions.'). Accord Adickes v. S.H. Kress & Co., 398 U.S. 144, 152, 90 S. Ct. 1598, 1605-06, 26 L. Ed 2d 142 (1970); United States v. Price, 383 U.S. 787, 794,86 S. Ct. 1152, 1156, 16 L.Ed.2d 267 (1966). As the district court told the jury in its charge, '[a] Sec. 1983 defendant need not be an officer of the state. It is enough if he is a willful participant in joint acitivity with the state or its agents.'" In Owen v. City of Independence, Mo. 445 U.S. 622, 635 (1980), the Supreme Court stated:

"...By its terms, Sec. 1983 ' creates a species of tort liability that on its face admits of no immunities.' Imbler v. Pachtman, 424 U.S. 409, 417, 96 S. Ct. 984, 988, 47, L.Ed. 2d 128 (1976). Its language is absolute and unqualified; no mention is made of any privileges, immunities, or defenses that may be asserted. Rather, the Act imposes liability upon 'every person' who, under color of state law or custom, 'subjects, or

causes to be subjected, any citizen of the United States.... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.' (Footnote omitted)...."

The appellees only basis for their motions to dismiss was Rule 12 (b)(1) of Federal Rules of Civil Procedure. In decision of June 8, 2005 trial court wrote," ...this Court, agrees that Defendant's Motion to Dismiss should be granted because it is apparent that this Court has no federal question or diversity jurisdiction over these two cases....(page 2 of decision) "... Mills claims 'malicious testimony before the Board causing Plaintiff to suffer financial and emotional damages.' (Page 5 decision of June 8, 2005)

" Application of the Rooker-Feldman doctrine is, therefore, neither appropriate, nor necessary in this instance. (Page 18 decision of June 8, 2005)

"..... Lacking jurisdiction, this Court should go no further as this case must be dismissed on lacks of jurisdiction grounds alone." (Page 18 decision of June 8, 2005).

While Dr Mills agrees that trial court did not have federal- diversity jurisdiction with respect to defendants B, based upon information and belief, defendants C may have been citizens of the State of Florida on date of underlying action being filed. Accordingly, there may be a basis for the trial court having federal diversity jurisdiction with respect to the C family. Per motion of these defendants, these cases were combined and both pertained to questions of federal law and statute.

When C refused to sign release forms for confidential health records, they were in violation of Federal laws. This was not just the " giving of information," but committing an act of collusion forcing someone to violate Federal Law. It does not seem even plausible that this family would want to destroy a physician's entire career because they did not want to pay a twenty dollar ($20) copying and transfer fee. That was the amount requested at the bottom of the medical release form.

Even the Medical Board does not want you to believe that so they were not acting as private individuals. This is not simply a claim against private individuals for stating their opinions to a medical board, this is not simply a case based on tort, state and local issues.

It is a Federal issue when parent B was involved in the tampering with communications. Dr Mills was victim to several toxic environmental incidents including a 12,000 gallon underground gasoline storage tank leak from a neighboring Speedy Oil Petroleum, Inc. This not only contaminated her Pediatric office building but so affected neighboring homes, the ground water and sewer lines in Cranston, Rhode Island. Mills began Environmental Medicine in 1998 and was able to monitor her own building with 3 M Corp passive diffusion monitors. The testing was done by Braun Intertec and results revealed gasoline vapors in Mills' building at 90.6 ppm. Mills' brother Attorney Mills, gave this report to DEM (Department of Environmental Management State of Rhode Island) and three days later they confirmed this as a toxic waste site and began solvent vapor extraction. Mills was denied all due process and equal protection of law when the medical board refused to allow her any of the DEM public record concerning this contamination. The record only contains parent B's testimony at page 21, September 21, 2000, " it was a bizarre statement," (referring to Dr Mills telling this parent she was concerned about gasoline and benzene vapors in her office building). The B family testified that Dr Mills was delusional to believe that her building(s) were toxic. Of course, defendant family B were clearly not qualified to render such an opinion. Not only did DEM confirm the contamination but See Attorney General Sheldon Whitehouse State of Rhode Island v. Speedy Oil, Inc., PC-00229, Providence Superior Court, Rhode Island for further details regarding this toxic waste site.

When this mother wrote, " You convinced me to write this...." (referring to McIntyre at Medical Board), the " urged

and advised" clause applied. It is misleading conduct, making false statements to convince another and to be untruthful. See U.S. vs Rodoliz CA, 2 NY 786 F.2d 77, cert den (1986) 479 U.S. 826 where it reads, ".... engaging in misleading conduct to another person..." In U.S. vs De Zaqnn (1998), it reads in part, "....knowing what a question means and giving knowingly untruthful answers in response is " perjury." The B family knew there was a problem with this building on February 1, 1999 because Dr Mills told them there was. Why then never review the facts and testify that their belief is Dr Mills was irrational to believe there was gasoline and benzene polluting the air in her building. As a matter of law this activity on the defendants' part is unconscionable. Federal laws regarding tampering with communications, perjury, and disclosure of private communications are very stringent and should be seriously considered in the instant case. No physician is able to practice under such circumstances as took place in this case. This mother used a taping device during her July 30, 1999 visit to Dr Mills' office alleging to need camp and physical forms filled out before the weekend, it being a Friday. This mother refused scheduling another appointment, refused Dr Mills making a house call and was adamant that her daughters be seen that day, fully knowing that Dr Mills could not use her office in its usual manner for patient exams. The purpose of USCS 2510-2520 is to prevent improper invasion of privacy. Article 250.25 (NY) and other such laws are to prevent tampering with electronic and other oral communications. Under Act 1986 18 USCS 2501 (111), "...any person whose wire or oral communication is intercepted, disclosed... (1) have civil cause of action against any other person to....disclose or use such communication...." Under 18 USCS 2511, "...a good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil or criminal action brought under this chapter..." and further citing under 30 AM Jur Proof of Facts at 113 and Omnibus Crime Control and Safe

Streets Act of 1968 (18USCS 2520) Act 25 ALR Fed 759 Fed Procedure L. Ed 8 Fed Proc L.Ed Criminal Procedure 22:231, "...Federal law controls questions relating to accrual of cause of action under statute..." Boddie vs American Broadcasting Co 1984 AC 6 Ohio 1923, 15 Fed Rules of Evid Serv 833, 1988 ND Ohio, "... It is illegal to disclose contents of wiretap," Anthony vs US 1981 CA 10 Okla 667 Fed 870 cert den (1982) In US vs McIntyre (1978) 582 F.2d 1221, "... police officer acts outside scope of duties with " bad purpose" and hence wilfully within meaning of 18 USCS 2511 where he or she engages in electronic surveillance without court order and in absence of emergency describes in 18 USCS 2518 (7) also citing Ross 1983 CA 8 Ark 713 F.2d 389.

Patient-doctor communications are considered private communications and in fact are governed by privacy acts when it involves adolescents as was the visit to Dr Mills on July 30, 1999. With all reasonable expectations this visit between parent, her two daughters-one a fifteen (15) year old adolescent was to be a private communication; (See US vs Padilla 1975 CA 1 Puerto Rico 520 F.2d 526 and Holman vs Central Ark Broadcasting). " A persons' reasonable expectation of privacy is a matter that needs to be considered on a case by case basis taking unique characteristics and facts into consideration with 1) subjective expectation of privacy and 2) was expectation objectively reasonable." (no reasonable doctor-pediatrician would anticipate their conversation would be monitored electronically) See Benford vs Amer Broadcasting Co 1982 Dc Md 554 F Supp 145, "....state law... preempted by Federal regulation ...court to consider relationship between state and federal law...interpreted and applied." During a more than one hour conversation between Dr Mills and parent B, discussion took place about various issues including the underground gasoline storage tank leak and its impact on the 107 Warwick Ave property where Dr Mills had her previous office. The document produced by parent B was clearly misrepresented

and altered when presented to a third party.

The court is prejudicial when at page 4 of the decision it reads, " However, she goes further still accusing the Browns of actually abusing their children and essentially that their testimony before the Board was some form of cover-up for the alleged abuse." Dr Mills has no ideas as to why parent B would have testified that Dr Mills was " irrational" rather than to review the DEM public record with her husband, a State of Rhode Island employee. Perhaps the Justice's inaccurate inferences are true of what he thinks Dr Mills believes, and it was a cover-up for abuse. Dr Mills has no idea if her testimony was a cover-up for abuse. Mills only knows the following facts 1) Defendant C's infant had a faltering head circumference which was at first in the 95th % ile and by two years of age was less than the 5th % ile, a very concerning fact, 2) Defendant B's two oldest girls [one just 15 years of age at the time Mills made the report to DCYF] had over twenty-nine (29) serious injuries including skull, jaw, and limb fractures resulting in epilepsy in one girl and leg length discrepancy and scoliosis in the other, 3) Dr Mills' building was contaminated and the State confirmed it, 4) records of a NEAR SIDS event were never " lost in the Navy" but are still on microfiche at Bridgeport Hospital, 5) Mills reported a fifteen (15) year old girl to the child abuse Hotline (Medical Board, McIntyre and Court all state Mills only reported an 18 year old to the Hotline, yet it is clear that the DCYF report and CPS Report Protocol written by DCYF about that call, both show the victim and reference person was a 15 year old girl). As to this call to DCYF, this court is aware there is a very important difference between reporting actual child abuse and only a suspicion of child abuse; fact is Dr Mills only reported as a "concern" (page 2 of DCYF Hotline call October 5, 1999). Parent B wrote, " I did not want to hurt Dr Mills but you (McIntyre) convinced me that you were out to help her." Again an act of collusion and as state actors, 4) Parent B tape-recorded Dr Mills July 30, 1999

during a doctor-patient visit. This communication was subsequently tampered with and given to a third party.

In any event. arguendo, Dr Mills again states the law is clear that the trial court did have federal-question-subject-matter jurisdiction. The defendant-appellees clearly violated Dr Mills' right under " the Due Process or Equal Protection Clause of the Fourteenth Amendment." It is clear Dr Mills has suffered injury in fact as a result of families B and C, Dr Mills has standing to sue and that the underlying complaint can be filed in federal court pursuant to the Civil Rights Act of 1871, Title 42 of the United States Code, Section 1983, and Title 28 of the United States Code, Section 1343, seeking redress for the deprivation of Dr Mills' rights by appellees under the Constitution of the United States and more particularly the Fifth Amendment and the Fourteenth Amendment of the Constitution of the United States. The trial court also had subject-matter jurisdiction by virtue of Title 28 of the United States Code, Section 1343 and Title 28 of the United States Code, Section 1331. In Konigsberg v. State Bar of California, 353 U.S. 252, 262, (1957), the Supreme Court stated in part:

"...He contends here, as he did in the California court, that there is no evidence in the record which rationally supports a finding of doubt about his character or loyalty. If this contention is correct, he has been denied the right to practice law although there was no basis for the finding that he failed to meet the qualifications which the State demands of a person seeking to become a lawyer. If this is true, California's refusal to admit him is a denial of due process and of equal protection of the laws because both arbitrary and discriminatory..."

In Schware v Board of Bar Exam of State of N.M., 353 U.S. 232, 238-239 (1957), Supreme Court stated:

" A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process and Equal Protection Clause of the Fourteenth Amendment. (Footnote omitted). (Citations

omitted). A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. (Citations omitted). Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant where there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. (Citation omitted)."

This complaint encompasses 1) Fourteenth Amendment and the Enabling statute 1983 2) elements of standing per Article III 3) injury in fact requirement 4) the Court's familiarity with state law, state actors and 5) the belief that one party had taken up residence in Florida.

The Court with excusable neglect or wanton disregard fails to address all issues which support the subject matter of jurisdiction being in its proper forum in Federal Court.

The Court takes issue with the fact that Mills had several cases heard in both Federal and State Courts in Rhode Island. Dr Mills has been denied her procedural, civil, constitutional rights as allowed by the Fourteenth Amendment and denied her appeal. See Thompson v City of Louisiana 362 U.S. 199 (1960), it reads in part, "...were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment...whether rests upon any evidence at all." Washington vs United States 357 US 348 (1958) and Garner v Louisiana 368 US 157, 163 (1961) all reversed because of " insufficiency of evidence." In further violation of Dr Mills' due process and equal protection is the use of other 'court' proceedings in this case. See States vs Jones 29, F. 3d 1549, 1553 (11th Cir 1994). Fed R. Evid 201 (b) provides a judicially noticed fact that must be one not subject to reasonable dispute

in that it is either 1) generally known within the territorial jurisdiction of the trial court or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." It is certainly without any reasonable doubt that Dr Mills' building was so adversely affected by gasoline and benzene vapors from an underground gasoline storage tank leak. The Providence, Rhode Island Courts both Federal and State had to know the case PC 00229 brought by Attorney General Sheldon Whitehouse against Speedy Oil, Inc. If it is permissible for a court to take judicial notice of a fact merely because of being found to be true in some other action, the doctrine of collateral estoppel would be superfluous. 21 C. Wright & K. Graham, Federal Practice and Procedure; 256-257. Depriving Dr Mills from a right to jury with her evidence where the facts were not indisputable violated her constitutional guarantee of trial by jury. United States v Aluminum Co of America 148 F.2d 416,446 (2d Cir 1945). Only for the limited purpose of recognizing a 'judicial act' that the order represents may a court take notice of another court's order, United States v Garland 991 F.2d 328, 332 (6th Cir 1993). It " cannot judicially notice the veracity of allegations in affidavits...." FDIC v O'Flahaven, 857 F. Supp 154, 157-58 (D.N.H 1994). I n violation of Dr Mills' due process and equal protection all not affording her due process and equal protection, not allowing her any supporting evidence or witnesses in violation of the Fourteenth Amendment, "... which shall abridge the privileges or immunities of citizens of the United States; from depriving, " an person of life, liberty or property without due process of law, " and from " denying to any person within its jurisdiction the equal protection of the laws." Through this Amendment, Mills cites grounds upon which the Federal District Court's jurisdiction depends. Justicability is that a real and substantial controversy exists between these parties. Mills is not being obtrusive, not being vindictive but is just protecting her civil rights, using the only

means available to exonerate herself from the false allegations, humiliation, embarrassment, and to put an end to this "nightmare" as the Defendant's counsel so rightly described the situation.

The standing requirements of Article III as to 1) whether Mills suffered harm and 2) the interest sought to be protected is arguably within the zone of interests protected by the statute or constitutional guaranty in question and have been met. As noted in 1 Fed Proc L. Ed at pg 49 1:12, " ...anyone who has suffered a palpable injury as a result of acts alleged to violate Federal laws and whose injury is a legal injury has standing to sue." Bantam Books vs Sullivan. In Fed R Evid 103 it states that, " close examination of the facts in each individual case must be afforded and that the effects of erroneous ruling may not be predicated upon that which admits or excludes evidence unless a substantial right of the party is affected. The court will not hold an error in omitting or excluding evidence harmless where the error did not influence the jury or had but a very slight effect on the court's verdict. The court should not be substantially swayed by the error. In all forums this has taken place here. The appellees in this case had not one shred of evidence to support their allegations. At the pleading stage, as this case is technically, per Fed Rule 1:12 at pg 47, " general factual allegations of injury resulting from the Defendants' conduct may suffice, for on a motion to dismiss, the court presumes that general allegations embrace those specific facts that are necessary to support the claim." Pennell vs San Jose (1988) 485. The injury in fact requirement involves three elements to meet the constitutional minimum, 1(plaintiff must have suffered an injury/invasion of a legally protected interest- this took place, 2) there must be a causal connection- defendants both admitting to aiding Mr McIntyre, 3) it must be likely, not merely speculative that the injury will be addressed by a favorable decision- with a review of the facts rather than prejudice, bias, slander, discrimination, there should not be an

unfavorable conclusion for Appellee, the decision should be overturned. Access to District Courts at 1:844 FRCP @ pg 646 reads, " if the forum chosen by plaintiff is convenient....no element of harassment in the choice of forum...the plaintiff's choice of forum should not or rarely should be disturbed." At 1:939 FRCP pg 714," the plaintiff's forum should be respected so long as no harassment is intended... and a defendant must establish that he has been oppressed and vexed out of all proportion to the plaintiff's convenience." Thomas vs Palmieir (1966 CA 2 NY) 355 F 2d 64 as per FRCP 12 (b)(1), " where defendant has challenged the jurisdiction, district court should give plaintiff opportunity to present facts in support," Viquiera vs First Bank. A controversy of two citizens of Maryland was dismissed but then overturned by the District Court in Wiren vs Laws 1951, 90 US App. DC 105, 194 F 2d 873. There was no strong showing of the balance of convenience. There is the court's familiarity with applicable state law. Since a lot of the issues presented have to do with RIGL and Federal Law, both as immunity, confidentiality of health care information as per FRCP 1: 865, " it was to an advantage to have the case decided in the district court because it embodied elements of denial of ones' civil rights. Van Dusen v Barrack (1964) 376 US 612 11 L.Ed F 2d 945, 84 S Ct 805. The court may weigh evidence as in Daniel vsFergueson 839 F 2d 1124 such as testimony. The defendant's testimony contradicted the only evidence that was allowed on the record and most certainly all the supporting evidence and witness testimony that was motioned to be placed on record but was not allowed.

Further as to subject matter of jurisdiction, the claim set out Federal issues which are 1) not frivolous, 2) not unsubstantial- now with losses in the millions (FRCP Rule 12 (b)(1)), 3) decide issues of jurisdiction (Trager vs Rochelle Hospital), 4) real and immediate injury to date, and 5) no reasonable belief that defendants' words or acts were based in fact. Rule 12 (b)(1) reads that a motion to dismiss cannot be

granted for lack of subject matter jurisdiction if the complaint purports to set out federal claim and the claim is not frivolous and is not unsubstantial. The issues of mandatory reporting of suspicions of child abuse are a national concern-both federal and state, tampering with communications are a national concern-both federal and state, confidentiality of health care information is of national concern-both federal and state. " In deciding issues of jurisdiction pursuant to this Rule 12 (b)(1) motion, the trial court has the discretion as to the manner of making factual determinations-provided parties are afforded full and fair opportunity to be heard." Trager vs New Rochelle Hospital Medical Center (1978, SD NY) 453 F Supp 516. The Federal question is why these defendants would have committed acts without any evidence, without any investigation before making such false allegations. Question for the jury is are they state actors or private parties acting with state officials or private parties. Only through discovery can it be determined whether 1) there was an elaborate financial or regulatory nexus... which compelled the defendants to act as they did 2) a symbiotic relationship involving sharing of profits..." It needs to be determined why and for what gain did this set of events take place for it certainly was not a health care quality issue.

The court is inaccurate in stating Dr Mills brought this complaint after a decision was made against her in her license case. Both of these complaints were brought in September/October 2003, the decision in her license case was not made until November 13, 2003.

Even if Mills was successful in her license case, these claims would still have been brought for the acts committed were not only with ill will but malicious intent violating all the laws of our land (Federal), acts so far reaching as unreasonable acts not based on any prior investigation of facts but based on mere whim

After barring the claim utilizing the lack of jurisdiction

argument, the court furthered that they would have next applied the Rooker Feldman doctrine. This doctrine provides the lower federal courts, " do not have subject matter jurisdiction to review state court decisions." Dr Mills did not file against these defendants in state court, the decision on Dr Mills' license appeal was not made until after the claims were brought against the C and B families, had the license appeal been favorable for Dr Mills these claims would still have been brought because the issues for which these claims were brought are the violation of federal laws. So this case is not barred by 1) those actually decided in state court and 2) "inextricably intertwined" with a state court judgment. In fact, in the medical license case of Mills the Medical Board, McIntyre and the RI Judicial System in total did not even address the issues of 1) tampering with communications, 2) required releases for confidential health care information, 3) even going so far as to state in an Interim Order dated March 21, 2001 that, " toxic buildings was not an issue central to this case;" not reviewing any of the Public records on toxic contamination. The issues of tampering with communication after taping a physician in a private doctor patient interaction is a federal violation and violates Dr Mills' right to due process. The case is brought to afford Dr Mills this due process and would have been brought even if her license were not reinstated. At page 17 the court writes, "... rather she is here having failed in her state court claims against the Board." This is inaccurate.

Plaintiff never motioned the lower District Court to review a State Court decision. When the instant case(s) were brought, the State Court had not even reached a decision, so this issue is moot and cannot stand as a matter of law.

Dr Mills filed the claims under 28 U.S.C. 1331 and 42 U.S.C. 1983. Two parts to the "state action" requirement are 1) exercise of some right or privilege created by the state, or by a rule of conduct imposed by the state or by a person for whom the state is responsible," 2) "...private individual is a defendant

in a section 1983 action, there must be a showing that the private party and state actor jointly deprived plaintiff of her civil rights." In is not just "alleged malicious testimony of defendants before a medical board," but it is an act of taping a physician in a doctor-patient visit and altering that taped communication and tendering it to a third party; obtaining private confidential health care information without signing written releases for this information and persisting in this type of behavior [Motion to Dismiss, Dec 2003, Counsel for and brother of Parent B, writes in part, page 6, " an unfortunate defendant (Parent B) ...forced to defend against...unsound mind (Dr Mills)..." This libel cannot be tolerated and is a separate and distinct issue from Dr Mills' license case.

The recent case of Exxon Mobil Corp v Saudi Basic Indus Corp 2005 reads, " ....Rooker Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow Federal courts to stay or dismiss proceedings.....arguably may cause these cases to fall under the Supreme Court's latest version of the Rooker Feldman doctrine...such reasoning need not be employed here....and so because the Plaintiff allegedly has not met initial jurisdictional bars." So the trial court did rule that dismissal was not based upon Rooker-Feldman doctrine (page 18 decision of June 8, 2005), " Application of the Rooker-Feldman doctrine is, therefore neither appropriate nor necessary in this instance." The court would have utilized this case to bar Dr Mills' complaint had they not barred her case based only on whether jurisdictional factors were met. However, in Exxon Mobil Corp v Saudi Basic Ind. Corp., — U.S.— , 125 S. Ct. 1517 (2005) the Supreme Court clarified the Rooker Feldman doctrine and ruled:

" This case concerns what has come to be known as the Rooker-Feldman doctrine, applied by this Court only twice, first in Rooker v Fidelity Trust Co., 263 U.S. 413 (1923), then, 60 years later, in District of Columbia Court of Appeals v.

Feldman, 460, U.S. 462 (1983). Variously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the Rooker and Feldman cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts, and superseding the ordinary application of preclusion law pursuant U.S.C. 1738...."

"...Preclusion, of course, is not a jurisdictional matter. See Fed Rule Civ Proc. 8©) (listing res judicata as an affirmative defense)....

" Nor does 1257 stop a district court from exercising subject matter jurisdiction simply because a party attempts to litigate in state court. If a federal plaintiff 'present[s] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party...., then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." (Citations omitted). With all due respect to this Court, in view of the above quoted language, the Rooker-Feldman doctrine can no longer be " [v]ariously interpreted in the lower courts" to be whatever a court wants it to be. It should not be used as a vehicle to deny justice. Under the principles of claim preclusion and issue preclusion, Dr Mills is not precluded from filing the instant action against these defendants. Verizon Md. Inc. V. Pub Serv. Comm'n of Md., 535 U.S. 635, 644 n.3 (2002) ('The Rooker-Feldman doctrine merely recognizes that 28 U.S.C. 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments.") Moreover, as stated, when Dr Mills filed the underlying actions in September/October 2003, that are the subject of the instant appeal, Dr Mills' appeal regarding her medical license case had not been heard- was in November 2003.

The court also barred Dr Mills the opportunity to amend her complaint as per Fed R. Civ P. 15 (a) which

provides leave to amend a complaint and it " shall be freely given when justice so requires." The Court went so far as to state it was "futile to amend."In response to the issue of whether the trial court's language of conclusion that it would have been futile for Dr Mills to amend her complaint, Dr Mills states the following also with reference to 15 (a) :

"(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served....."

See Rule 7(a) of the Federal Rules of Civil Procedure for the meaning of the term "pleading." Accordingly, with the above-quoted language Dr Mills did not even need the trial court's permission to file an amended complaint because no answer had been filed. Further, the court by its denial of the amended complaint, ignored the issues which support subject-matter jurisdiction being in its proper forum in this court.

It was an error as a matter of law for the trial court to rule that Dr Mills could not file an amended answer.

The court furthered, because this is a Federal claim the Defendants are not affected by RI Gen Laws 5-37-1.5 which grants immunity to witnesses for statements made in " good faith." "...because 42 U.S.C. 1983 is a federal statute not state law, is controlling as to the scope of immunity enjoyed by witnesses before the Board." The HCQIA provides for the same immunity from damages in all peer review processes if they comply with certain standards and this is federal law: 1)must be with reasonable belief that they are furthering the health care quality (certainly not in the interest of health care when B alleged there were no contaminants in Dr Mills' building(s), 2) a full review of the facts must be made, then reasonable belief that such actions are warranted by these facts is there immunity. Parent B's allegation that Dr Mills' beliefs about contamination to her building(s) was preventing quality of health care and undermining this very issue of public health care. This clearly reveals this mother did not meet any Federal

standards for immunity with respect to HCQIA. The amended HCQIA focuses solely on the reasonableness of belief. In one of the most recent cases, Timothy Patrick vs William Burget et al, it was decided that, " private parties cannot claim state action immunity because entities as Boards of Medicine, Departments of Health, and State Judiciary Systems do not have review over private decisions such as medical peer reviews. Effective review is essential to provision of quality of medical care." In the court's memorandum from Chief Justice Marshall it reads in part, " ...because of high public interest in having effective discipline and regulatory system for physicians , and need to have persons testify freely and without fear of retribution this courts holds that witnesses who testify are entitled to absolute immunity." So organizations as the Semmelweiss Society have formed because this so called "absolute immunity," has resulted in individuals giving false testimony, committing acts of perjury and acts in violation of federal law to harm any physician that they dislike. (See Semmelweiss Society International and web site on " How To Destroy Someone You Dislike").The only expert witness testified over and over, " assuming all information given to me is true." In both of these Dr Mills was denied her due process and equal protection of law. AMA has developed policy uder H-375.983 entitled Peer Review after Patrick v Burget in 1988 and reaffirmed in 2001 with detailed guidelines to ensure fairness to the physician subjected to that very situation in which Dr Mills has been placed. Hearing panels must, " consist of physicians none of whom are direct economic competitors ...and not deprived of a license based solely on the medical testimony of the economic competitors...."

Further, with reference to any immunity claims by the defendants, the burden is on them to prove entitlement to immunity. Antoine v. Byers & Anderson Inc., 508 U.S. 429, 432 (1993) (" The proponent of a claim to absolute immunity bears the burden of establishing the justification for such

immunity."); Dennis v. Sparks, 449 U.S. 24, 29 (1980) ("The immunities of state officials that we have recognized for purposes of Sec. 1983 are the equivalents of those that were recognized at common law.....and the burden is on the official claiming immunity to demonstrate his entitlement."); and, Ringuette v. City of Fall River, 146 F.3d 1, 4 (1st Cir 1998) for the rule that immunity is an affirmative defense ("Qualified immunity is an affirmative defense, Fed R. Civ. P. 8 ©))".

Immunity provided after meeting HCQIA standards is limited to protection from liability damages only and not immunity from suit and does not apply to civil rights actions. So as a matter of law these defendants cannot be afforded immunity. "Immunity under HCQIA is a question of law for the court to decide, and may be resolved whenever the record has been sufficiently developed." HCQIA 1986 412 a, 42 U.S.C.A. Next the court wrote, "....this instant complaint is part of a pattern of activity that includes multiple lawsuits and complaints arising from the same nexus of fact... (at page 23 under #6 writes), this court notes that Plaintiff has similar cases arising from the Board proceedings pending against defendants similarly situation to the B and C's in other courts within this jurisdiction." The only other case is that against Alfred Toselli, M.D. and he did not testify against Mills and was not part of the license case. Most importantly, the court is not to address other judicial actions as noted above.

The court's bias and prejudice is clear throughout the decision even as the court utilizes labels as " multiple and disparate filings." Dr Mills has been forced to bring claims against those who have denied her due process and equal protection of law. At page 3 so early on in the court's decision it reads, " with the caveat that she will be subject to sanctions should she further pursue the instant motion in this forum." Dr Mills has been subjected to humiliation, embarrassment, hearing her name ridiculed on radio talk shows with such inaccurate statements as, " she examined women in cars with

their legs up over seats." Dr Mills referred any adolescent patient in need of a Gynecological exam, to an Obstetrician Gynecologist.

Dr Mills' filing is not done, as defendants refer to in Schramek v Jone, " in bad faith for improper purpose." With the bias and prejudice removed, Dr Mills' pleading will have a chance of success because this pleading has a factual basis.

As state actors, there is a name for this activity as coined and used by the Semmelweiss Society and that is " moles." With no unprofessional conduct, an inaccurate picture is created. This is done over and over again to physicians that "someone does not like." Those cognizant of this activity began this Society in honor of Dr. Semmelweiss who founded the surgical procedure of sterile gloving and was subsequently ostracized from society and plagued by the same type of activity as here by the defendant-appellees and state official(s). The Oregon Medical Association passed a resolution to "explore ways and means to prevent misuse of the 'Disruptive Physician Doctrine.' Chief Operating Officer for the OMA wrote, " This has happened enough times that there has to be some question about whether, is some cases, that doctrine of the disruptive physician isn't perverted for means that have a chilling effect on the willingness of physicians to speak out on things that aren't right in a hospital." Some doctors use this "disruptive doctor" doctrine to go after whistleblowers. Again this is exactly what has taken place in the case of Dr Mills.

DECISION BELOW CONFLICTS WITH PRECEDENTS

The Decision of the First District Court of Appeals is contrary to the following decision of precedents: Bell v. Hood, 327 U.S. 678,685 (1946), ("[T]"he right of the petitioners to recover under their complaint will be sustained if the Constitution and Laws of the United States are given one

construction and will be defeated if given another. "For this reason District Court has jurisdiction."); Steel Co v Citizens 1998. Rooker Feldman can no longer be "variously utilized in lower courts to be whatever a court wants it to be," not to be used as a vehicle to deny justice. Decisions by Judges Martin, Lagueux reveal ambiguity of their conclusions. Page 9, Judge Martin writes, " If the injury is due to the state court judgment, then the federal court lacks subject matter jurisdiction (Citing Edwards v. Illinois Bd. Of Admissions to the Bar, 7th Cir 2001). If not, then the Rooker-Feldman doctrine does not bar the exercise of jurisdiction (Edwards v Illinois) It is error to apply it in the instant case because the appeal regarding Mills' medical license was not even heard when this case(s) was filed, and is in error under principles of the doctrines of claim preclusion and issue preclusion. Therefore even as a matter of law the "injury" was not due to the state court judgment. As a matter of law, Rooker Feldman doctrine does not bar the exercise of jurisdiction here. Judge Lagueux, at 17, " ....rather she is here having failed in her state court claims against the Board." Again, as a matter of law, this is inaccurate. Judge Lagueux, at 17, " In order to invoke Rooker-Feldman, Judge Martin.....While such a conclusion may be accurate, and arguably may cause these cases to fall under the Supreme Court's latest version of Rooker Feldman doctrine such reasoning need not be employed here. .....is appropriate only where Plaintiff has overcome initial jurisdictional bars." Judge Martin bars Mills' amended claim which per Federal Rule 15 (a), as a matter of law Mills was entitled to file an amended complaint because " no responsive pleading had yet been served." As a matter of law, the trial court was in error, but at page 6, "First, because of the Rooker-Feldman doctrine, this court is without subject matter jurisdiction. Second .....defendants are not state actors. Third Defendants are protected by absolute immunity." Their arguments are at best equivocal and circuitous. Judge Lagueux page 13, "defendants

did not act under color of state law when they filed their complaints with the Board," " there is no elaborate financial or regulatory nexus between them and the State of Rhode Island....."page 15, " Similarly Judge Martin also correctly concludes Defendants did not act under color of state law when testified before Board." These conclusions not based on any fact are questions for jury [defendants were 1)convinced and 2) aided by state official(s) one tampering with communications, other obtained confidential health records without written request both in violation of Federal laws]. "The proponent of a claim to absolute immunity bears the burden of establishing the justification for such immunity," (Antoine v Byers 1993) and burden is on appellees.

CONCLUSION

The instant case is of major public concern, addressing deprivation of rights, privileges, immunities secured by the Constitution and its Laws. This appeal must be granted or otherwise sends messages to all patients (United States citizens) they are obliged to be "wilful participants in joint activity with the state or its agents," denying ones' rights on a mere whim. AMA, Semmelweiss have created policy in the wake of such activity but cannot promote ethical, moral, legal needs of our society without a Judicial system protecting citizens' rights. As a public concern, HCQIA 1986 and NPDB were formed. Panel members were given civil immunity as long as their actions were with "reasonable belief in furthering health care quality." Injury in fact resulting from defendants acts, affords Mills pursuant to Civil Rights Act of 1871, Title 28 Sec 1343, Title 42 Sec 1983, the standing to sue and right to seek redress under Fifth and Fourteenth Amendments of Constitution of the United States, subject matter jurisdiction by virtue of Title 28 Sec 1343 and Sec 1331

Wherefore, Appellant, Geraldine Mills, M.D. respectfully requests that this Honorable United States Supreme Court grant her Writ of Certiorari.

Respectfully submitted by,
Geraldine Mills, M.D. pro se
191 Squantum Drive
Warwick, Rhode Island 02888
401-463-8433

APPENDIX -- A

UNITED STATES COURT OF APPEALS -
For the First Circuit

No. 05-2061

GERALDINE MILLS,
Plaintiff, Appellant.

v,
STEVE BROWN and JOYCE BROWN
Defendants, Appellees.

No. 05-2062

GERALDINE MILLS,
Plaintiff, Appellant

v.
DEBORAH CINQUEGRANA and BRIAN CINQUEGRANA
Defendants, Appellees

Before
Boudin, Chief Judge,
Torruella, Selya, Circuit Judges,
Stahl, Senior Circuit Judge,
Lynch, Lipez, and Howard, Circuit Judges.

ORDER OF COURT
ENTERED: MAY 5, 2006

The stay of this appeal, entered on November 2, 2005, is hereby lifted.

The petition for rehearing having been denied by the panel of

judges who decided the case and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and petition for rehearing en banc be denied.

By the Court:
Richard Cusing Donovan, Clerk

By: /s/ Margaret Carter
Chief Deputy Clerk.

UNITED STATES COURT OF APPEALS
For the First Circuit

No. 05-2061

GERALDINE MILLS,
Plaintiff, Appellant

v.

STEVE BROWN and JOYCE BROWN
Defendants, Appellees

No: 05-2062

GERALDINE MILLS
Plaintiff, Appellant

v.

DEBORAH CINQUEGRANA and BRIAN CINQUEGRANA
Defendants, Appellees

Before
Boudin, Chief Judge
Stahl, Senior Circuit Judge
and Lynch, Circuit Judge

JUDGMENT

Entered: September 27, 2005

Essentially for the reasons given by the district court in its decision and order, dated June 8, 2005, we agree that the court lacked jurisdiction over plaintiff's complaint. Therefore, the dismissal of the complaint is affirmed.

Appellant's emergency motion to maintain medical records of Sarah Brown" is denied.

By the Court:
Richard Cushing Donovan, Clerk
By: /s/ Margaret Carter
Chief Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Geraldine Mills, M.D.
Plaintiff,
v C.A. 03-422L
Steve Brown and Joyce Brown
Defendants.

Geraldine Mills, M.D.
Plaintiff,
v. C.A. 03-457L
Deborah Cinquegrana and Brian Cinquegrana
Defendants

DECISION AND ORDER
Ronald R. Lagueux, Senior United States District Judge

These matters are before the Court on an "appeal" filed by Plaintiff, Geraldine Mills, to a Report and Recommendation

issued by Magistrate Judge David Martin in each case counseling dismissal of each case; and to a Memorandum and Order applicable to both cases denying Plaintiff's Motions to Amend her original complaints and to Submit Portions of Medical Records. Defendants Deborah and Brian Cinquegrana ("the Cinquegranas") also object to Judge Martini's recommendation that their Motion for Sanctions be denied. Defendants Steve and Joyce Brown ("the Browns") have not filed any objection to the Report and Recommendation or the Memorandum and Order applicable to their case. Although these two cases were separately filed and are not consolidated, they will be considered together since they involve the same issues of law. Where appropriate, the Browns and the Cinquegranas will be referred to collectively as Defendants.

As this Court has noted in the past, review of a magistrate judge's report and recommendation is de novo. See 28 U.S.C. 636; Local Rule 32 ©)(2); R.I. Med Soc'y v. Whitehouse, 323 F. Supp. 2d 283, 286-87 (D.R.I. 2004). After reviewing the record, and considering the memoranda submitted by the parties, this Court agrees that Defendants' Motions to Dismiss should be granted because it is apparent that this Court has no federal question or diversity jurisdiction over these two cases. This Court also agrees that Plaintiff's Motions to Amend each Complaint should be denied because the proposed amendment does not cure jurisdictional infirmity that plagues her original filing. Lastly, this Court agrees with Judge Martin's recommendation that Plaintiff not be sanctioned at this time-with the caveat that she will be subject to sanctions should she further pursue the instant matters in this forum.

BACKGROUND

Plaintiff filed her complaint against the Browns on September 18, 2003 and against the Cinquegranas on October 3, 2003., The substance of her complaints arises from a hearing held by the Rhode Island Board of Medical Licensure and

Discipline ("the Board") in which Defendants participated. In " Count One" of the Complaint in the Cinquegrana case Plaintiff contends that the Cinquegranas testified with malicious intent to harm Plaintiff. In its distilled form, Plaintiff seems to allege that those defendants' " malicious" testimony and statements tortiously interfered with her livelihood, caused her to lose business and income and caused her to suffer emotional distress. " Count Two" contains a substantially similar claim, alleging that defendants, with " malicious itent" and " ill will" tortiously interfered with Plaintiff's livelihood " by fabrications then as to the manner in which their daughter Tori was cared for." At the root of " Count Two" is the contention by Plaintiff that defendants' complaint filed with the Board was the " means" by which defendants interfered with her livelihood. Additionally, her complaint against the Cinquegranas contains allegations that defendant's failure to sign medical release forms for the release of their children's medical records was in violation of Rhode Island Law; and that this failure to sign formed the foundation for defendants' initial complaint to the Board which resulted in her subsequent loss of license. Plaintiff alleges that the failure by the Cinquegranas to sign the medical releases indicates that they acted with " malicious intent' and "ill will" thereby tortiously interfering with Plaintiff's livelihood. Plaintiff makes similarly constructed allegations against the Browns. However, she goes further still, accusing the Browns of actually abusing their children, and, essentially that their testimony to the Board was some form of cover-up for the alleged abuse. Plaintiff also seems to intimate that Steve Brown's position with the RI Department of Children Youth & Families in some way exacerbated the cover-up of the alleged abuse. In the end, however, the legal claims against the Browns are the same; malicious testimony before the Board causing Plaintiff to suffer financial and emotional damages. The Ciniquegranas responded to the allegations with their Motion to Dismiss on

December 16, 2003; the Browns responded in similar fashion on December 22, 2003. In their Fed R. Civ Pro. R 12 (b)(1) motions Defendants argue that the Complaint filed in each case contains no federal question nor diversity jurisdiction allegations and, therefore, there is no subject matter jurisdiction in this Court. On December 29, 2003, Plaintiff filed her Motion to Submit Records, her Motion to Amend and a document entitled " Objection to the Motion to Dismiss" in each case. Additionally Plaintiff filed a Motion to Expand Attachments to Memorandum Amend (sic) on January 5, 2004 which this Court granted on January 8, 2004. Plaintiff subsequently filed additional exhibits on January 27, 2004.

Plaintiff failed however, to submit a copy of her proposed amended complaint with the Motions to Amend, and consequently Judge Martin issued an order directing her to do so within fifteen days. In response to Judge Martin's Order, Plaintiff submitted her Proposed Amended Complaints on February 9, 2004. On March 8, 2004, a hearing was held before Judge Martin on the Motions to Dismiss, Motions to Amend, Plaintiff's Motions to Submit Records, and the Cinquegrana's Motions for Sanctions. During the Hearing Plaintiff acknowledges that her Complaints which contained no allegations sufficient to show Federal jurisdiction did not comply with Rule 8 and she requested that her Motions to Amend be granted. At close of hearing, Judge Martin took each of the matters under advisement and stayed all discovery pending issuance of his written opinion. On April 21, 2004 Judge Martin issued a Report and Recommendation in each case along with a Memorandum and Order denying Plaintiff's Motions to Amend. As noted above, Judge Martin recommended dismissal of both Complaints but does not recommend sanctioning Plaintiff- his reasoning essentially being that benefit of the doubt must be afforded to pro se plaintiffs regarding their lack of understanding of complex areas of law.

DISCUSSION

This Court, after review, adopts Judge Martin's recommendations- but not all his reasoning-regarding Defendant's Motions to Dismiss, and now limns its own reasoning to support dismissal of these two cases. A review of papers filed by Plaintiff, along with the observations made by Judge Martin in each Report and Recommendation make it clear that Plaintiff's complaints assert no basis for the exercise of federal jurisdiction in these cases and that is readily apparent. In recommending dismissal of the Complaints, Judge Martin makes note of this. However, he goes further still relying on the Rooker-Feldman doctrine' along with case law granting immunity from civil rights suits for witnesses giving testimony in judicial proceedings, as further support for recommendations of dismissal. The first three paragraphs of the Cinquegrana Complaint read as follows: 1)Plaintiff is an individual residing in Warwick Rhode Island County of Kent and is a Pediatrician. 2) Defendants Deborah and Brian Cinquegrana are parents of two girls who were in the medical care of the Plaintiff. They reside in Warwick Rhode Island This case is brought with reference to their representation to the Boared of Medical Licensure in Providence R.I. on October 5, 2000 which resulted in the tortious interference of the Plaintiff's livelihood. 3) Damages alleged are such as to confer jurisdiction of this matter before the Honorable United States District Court. Complaint paragraphs 1-3

As is readily apparent Plaintiff-apart from her bare-bones assertion that the "[d]amages alleged" confer jurisdiction on this Court- has failed to allege any legitimate grounds for filing these cases in this Court. Each Complaint alleges a species of tortious interference claim in each of the counts and fails to raise a federal question; the tort claims being grounded such as they are in state common and statutory law. Moreover, despite general allegations that Defendants have violated her rights, Plaintiff has neither alleged nor demonstrated the basic

grounds upon which such allegations must be founded in order to pass jurisdictional muster; namely that Defendants are state actors. Rather, she acknowledges that they are private individuals, acting in their capacity as complainants on behalf of their children before the Board. There being no allegations giving rise to federal question jurisdiction, Plaintiff has likewise failed to allege diversity jurisdiction to the contrary in the opening paragraphs of her complaints she states that both she and defendants reside in Rhode Island. Given Plaintiff's obvious inability to allege diversity of citizenship between the parties, this Court must conclude that diversity jurisdiction does not exist and need not enter into discussion regarding Plaintiff's failure to assert the amount in controversy necessary to trigger diversity jurisdiction in cases where diversity of citizenship has been appropriately alleged.

1. No Federal Question Jurisdiction The statute conferring federal question jurisdiction upon this Court states: " The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States, " 28 U.S.C. 1331 (2005). Therefore, for federal question jurisdiction to exist a controverted question of federal law must form a substantial part of the plaintiffs case See e/g McFadden Express Inc v Adley Corp 240 F. Supp 791, 794 (D. Conn 1965) (quoting Gully v First Nat'l Bank 299 U.S. 109 (1936) Despite passing reference to alleged violations of her civil rights and her later use of the Fourteenth Amendment I her Proposed Amended Complaints, the remedies which Plaintiff seeks in each case sound in tort. In all of their essential features the claims asserted by Plaintiff are based upon Defendants' allegedly malicious testimony before the Board which led to her loss of license. Every question which is raised depends for decision upon conventional local or general common law concepts and doctrines of tort to enforce Plaintiff's purely private rights. In determining whether or not Plaintiff's livelihood has been tortiously interfered with by

Defendants, it would undoubtedly be necessary to refer to or consult Rhode Island tort law and related statutes to determine if a cause of action is in fact available. There exists therefore no federal statute upon which Plaintiff's alternately named tortious and malicious testimony claims are founded. The case and statutory law are unequivocal: the basis for the subject matter jurisdiction of the federal district courts is limited and is set forth in 1331. A party seeking relief in a district court must at least plead facts which bring this action within the court's jurisdiction. See Fed R Civ P. 8(a)(1) (2005). Failure to plead such facts warrants dismissal of the action Fed R. Civ. P. 12 (h)(3) (2005; Gray v Internal Affairs Bureau 292 F. Supp 2d 475 476 (D.N.Y. 2003) (emphasis added). Plaintiff has made no allegations to support a federal cause of action and this together with Plaintiff's failure to plead diversity of citizenship leaves this Court no alternative but to grant Defendants' motion to dismiss. Manway Constr. Co., Inc v Housing Auth of City of Hartford, 711 F.2d 501 503 (2d Cir 1983). (Courts must dismiss cases for lack of subject matter jurisdiction). As Judge Martin notes, Plaintiff attempts to remedy this in her Proposed Complaints by alleging that the Fourteenth Amendment provides grounds upon which this Court's jurisdiction may rest while citing no statutes, federal or otherwise which would allow this Court to hear this action. As Judge Martin correctly points out: " The Fourteenth Amendment while guaranteeing certain rights, provides no vehicle for redress of violations of these rights. An enabling statute 42 U.S.C 1983 provides the means for bringing suit for alleged constitutional violations. A 1983 claim may however, only be brought against one acting under color of state law." Okropiridze v St Jude Children's Research Hosp Civ A. No. 95-254, 1995 WL 339021, at *2 (E.D. Pa. June 1, 1995); see also Alexis v McDonald's Rests of Massaachusetts Inc., 67 F.3d 341 351 (1st Cir 1995) ("A Section 1983 claim does not lie absent state action.") Judge Martin goes further in his skillful delineation of the state actor

requirement under the Fourteenth Amendment and its statutory progeny noting that there are two components to the " state action" requirement. First, the deprivation must be shown to have been caused by the exercise of some right or privilege created by the state, or by a rule of conduct imposed by the state, or by a person for whom the state is responsible.Casa Marie Inc v Superior Court of P.R. 988 F.2d 252, 258 (1st Cir 1993). Second the party charged with the deprivation must be a person who may fairly be said to be a state actor. Id. Where a private individual is a defendant in a section 1983 action there must be a showing that the private party and the state actor jointly deprived plaintiff of her civil rights. Wagenmann v Adams 829 F.2d 196 209 (1st Cir 1987); Casa Marie 988 F.2d 255-59, see also Dennis v Sparks 440 U.S. 24, 27-28 101 S. Ct. 183, 186-87, 66 L.Ed 2d 185 (1980) (" Private persons, jointly engaged with state officials in the challenged actions, are acting 'under color' of law for purposes of 1983 actions.") Alexis 67 F.3d 351. Thus he correctly concludes a 1983 action may not be brought against private actors See Brown v Newberger 291 F.3d 89 93 (1st Cir 2002) The test for determining whether one can be considered a state actor is " 1) whether there was an elaborate financial or regulatory nexus between defendants and the government...which compelled defendants to act as they did, 2) an assumption by defendants of a traditionally public function or 3) a symbiotic relationship involving the sharing of profits. Brown v Newberger 291 F.3d at 93 (quoting Ponce v Basketball Fed'n of the Commonwealth of Puerto Rico 760 F.2d 375 377 (1st Cir 1985) (Second alteration in original)). Applying this test, it is apparent that the Browns and the Cinquegranas are not state actors. There is no elaborate financial or regulatory nexus between them and the State of Rhode Island nor does Plaintiff allege any such arrangement in her initial complaint. Defendants did not assume a traditionally public function, and there is no symbiotic relationship between them and the State involving

the sharing of profits. Therefore defendants did not act under color of state law when they filed their complaints with the Board. See Auster Oil &Gas Inc v Stream 764 F.2d 381, 388 (5th Cir 1985) ("[A] private party does not act under color of state law when she merely elicits but does not join in an exercise of official state authority.") Tarkowski v Robert Bartlett Realty Co 644 F.2d 1204 1208 (7th Cir 1980) ("A private person does not conspire with a state official merely by invoking an exercise of the state officials' authority."); Serbalik v Gray 27 F. Supp 2d 127, 132 (N.D.N.Y. 1998) (holding that neighbors who filed complaint with Town regarding plaintiff's alleged failed septic system and who loaned bucket and hose to Town inspector watched him perform test, observed the results, and reported their observations to him were not engaged in "state action"); cf. Andresen v Diorio 349 F.3d 8, 13 (1st Cir 2003) (" [I]t is settled that the fact that private parties give the police information on which official action is then taken does not by itself convert the private parties into state actors."); Daniel v Fergueson 839 F.2d 1124, 1130 (5th Cir 1988)(holding that even if private defendant did provide police with false information the state action requirement for 1983 liability was not satisfied since "[p]olice reliance in making an arrest on information given by a private party does not make the private party a state actor"); id. ("The executing by a private party of a sworn complaint which forms the basis for an arrest is without more, not sufficient to make that party's acts state action.") (internal quotation marks omitted); Grow v Fisher, 523 F.2d 875 879 (7th Cir 1975) (finding that private persons who were complainants and witnesses in criminal prosecution were not acting under color of state law.). Similarly, Judge Martin also correctly concludes that Defendants did not act under color of state law when they testified before the Board. See Briscoe v LaHue 460 U.S. 325 329-30 103 S. Ct. 1109 1112-13 75 L.Ed 2d 96 (1983) ("[W]hen a private party gives

testimony in open court in a criminal trial that act is not performed under color of law."(internal quotation marks omitted); Slotnick v Garfinkle 632 F.2d 163 166 (1st Cir 1980) ("[P]articipation by a private party in litigation without more does not constitute state action, a necessary precondition to a section 1983 claim.") (citations omitted). Lastly, Judge Martin is correct when he notes that Plaintiff's allegation that Defendants acted with malice and the intent to harm her, does not alter the obvious Defendants are simply not state actors. See Johnson v Miller 680 F.2d 39, 40 (7th Cir 1982) (holding that the filing of a criminal complaint with the police is the act of a private citizen and that while a groundless complaint may violate state tort law, it does not alter the private character of the complainant.). Because Defendants were not acting under color of state law, an action against them pursuant to 1983 is barred and Judge Martin was correct in denying her Motion to Amend on this ground. 2) No diversity jurisdiction As this case involved no federal question, jurisdiction stands or falls upon diversity of citizenship. The statute conferring diversity jurisdiction upon this court states in pertinent part: (a) The district court shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 exclusive of interest and costs and is between—1) Citizens of different states 2) citizens of a State and citizens or subjects of a foreign state 3) citizens of different states and in which citizens or subjects or a foreign state are additional parties 28 USCS 1332 (2005) emphasis added. It has long been settled that a "lack of 'complete diversity' between parties deprives the federal courts of jurisdiction over the lawsuit." Casas Office Machs v Mita Copystaqr Am 42 F.3d 668 673-674 (1st Cir 1994) (quoting Sweeney v Westvaco Co 926 F.2d 29.41 (1st Cir 1991) Here, there exists neither complete nor even incomplete diversity. Plaintiff states in her complaint that both she and defendants are residents of Rhode Island, and therefore the inquiry need go no further. Plaintiff neither

alleges nor can allege diversity jurisdiction. Since she also failed to assert federal question jurisdiction she may not proceed in this court and her complaints must be dismissed for lack of subject matter jurisdiction. See McNutt v General Motors Acceptance Corp 298 U.S. 178 (1936). 3) Rooker Feldman Doctrine In his Memorandum and Order of April 21, 2004 denying Plaintiff's Motions to Amend Judge Martin relies in large part on the Rooker Feldman doctrine as a jurisdictional bar to Plaintiff's claims. He concludes that pursuant to Rooker Feldman this Court has no jurisdiction over Plaintiff's amended claims. It is worthy of note that the United States Supreme Court in Exxon Mobil Corp v Saudi Basic Indus Corp 125 S. Ct 1517 (2005) had recent occasion to revisit the Rooker Feldman doctrine. In Exxon Mobil the Court restated its holding that application of Rooker Feldman must be confined to cases of the kind from which the doctrine acquired its name: " cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. Rooker Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state court actions Exxon Mobil Corp 125 S. Ct. at 1521-1522.Plaintiff's claims do not fall precisely into this category. She has not filed and lost a case against the Defendants in state court; rather she is here having failed in her state claims against the Board. In order to invoke Rooker Feldman Judge Martin concludes that Plaintiff's amended claims against Defendants are " inextricably intertwined" with the state court's judgment in her case against the Board. Feldman 460 U.S. at 462. While such a conclusion may be accurate and arguably may cause these cases to fall under the Supreme Court's latest version of the Rooker Feldman doctrine, such reasoning need not be employed here. Rather

assertion of the Rooker Feldman doctrine as a jurisdictional br is appropriate only where Plaintiff has overcome the initial jurisdictional bars. See Feldman 460 U.S. at 476 Verizon Md Inc v Public Serv Comm'n of Md 535 U.S. 635,644 n.3 (2002) Here this court having concluded that Plaintiff has simply failed to assert subject matter jurisdiction in its most basic form, need not and may not go further. Application of the Rooker Feldman doctrine is therefore, neither appropriate nor necessary in this instance. 4)Immunity In his April 21, 2004 Memorandum and Order denying Plaintiff's Motions to Amend, Judge Martin also relies on quasi-judicial immunity. He opines that because Defendants testified before the Board, in a quai-judicial proceeding, they are thus immune from civil suit rendering Plaintiff's motion futile. However, much like Judge Martin's use of the Rooker Feldman doctrine, application of immunity concepts is simply unnecessary here. Plaintiff's initial complaints and subsequent proposed amended complaints do not make allegations sufficient to confer jurisdiction on this Court. Lacking jurisdiction this Court should go no further as this case must be dismissed on lack of jurisdiction grounds alone. 28 U.S.C. 1331-1332 (2005) See also Wilbert v Unum Lif Ins Co 981 F. Supp 61,62 (D.R.I. 1997). 5) The Ciniquegranas' Motion for Sanctions As noted above Plaintiff may not pursue her grievances in this court. However, despite round after round of adverse rulings, Plaintiff persists in pursuing the matter, choosing to " appeal" Judge Martin's Report and Recommendation and in so doing, causing Defendants to expend additional resources in their defense. Plaintiff's behavior stands in stark contrast to that of Defendants. Rather than pursuing sanctions, or recovery of attorney's fees spent in defense of what are unquestionalby frivolous claims, both sets of defendants were prepared to accept Judge Martin's findings despite an unfavorable recommendation regarding the Cinquegrana's Motions for Sanctions. It was only subsequent to Plaintiff's self-styled "

appeal" of Judge Martin's findings that the Cinquegranas filed papers requesting that this Court revisit the issue of sanctions. AS for the rule itself, Fed R. Civ P. 11 (b) states in pertinent part: b) Representations to Court. By presenting to the court whether by signing filing submitting or later advocating, a pleading written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the persons' knowledge information and belief formed after an inquiry reasonable under the circumstance....Fed R. Civ Pro R. 11 (2004). Rule 11 therefore, by its terms allows this court to impose sanctions on a plaintiff who files a complaint without some minimum of previous investigation, here clearly missing. See Unioil Inc v E.F. Hutton &Co 802 F.2d 1080, 1089-91 (9th Cir 1986); Westmoreland v CBS Inc 248 U.S. App. D.C. 255 770 F.2d 1168, 1173-75 (D.C. Cir 1985). The rule is applicable to this case, and by its express terms it is applilcable to parties who are unrepresented, such as Plaintiff. Schrock v Altru Nurses Registry, 810 F.2d 658, 661-662 (7th Cir 1987). Rule 11 sanctions may apply to anyone who signs a pleading motion or other papers, including pro se plaintiffs. See Fed R. Civ P. R. 11; Business Guides Inc v Chromatic Communications Enterprises Inc 498 U.S. 533 (1991) Although as noted by Judge Martin pleadings filed pro se litigants are held to " less stringent standards than formal pleadings drafted by lawyers," Report and Recommendation, CA 03-457 L (2004)Haines v Kerner 404 US 519 (1972), all litigants including those filing pro se have an obligation to comply with court orders and with the Federal Rules of Civil Procedure. Vitale v First Fid Leasing Group Inc 187 F.R.D. 445 448 (D. Conn 1999)) (admonishing pro se litigant that further filings arising from same nexus of factual and legal allegations will give rise to Rule 11 Sanctions); quoting McDonald v Head Criminal Court Supervisor Officer, 850 F.2d 121 124 (2d Cir 1988). The Rule does not list other factors that a court should consider in deciding whether to impose a sanction and what

sanction to impose. However, as described in 2-11 Moore's Federal Practice Civil 11.23 ("Moore's), the Advisory Committee Note suggests the following factors for the Court's consideration: whether the improper conduct was wilful, or negligent whether it was part of a pattern of activity or an isolated event whether it infected the entire pleading or only one particular count or defense, whether the person has engaged in similar conduct in other litigation, whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants. The Eleventh Circuit has condensed the factors described above to three types of conduct that warrant Rule 11 sanctions: 1)when party files a pleading that has no reasonable factual basis 2) when a party files a pleading that is based on legal theory that has no reasonable chance of success and that cannot be advanced as reasonable argument to change existing law; and 3) when a party files a pleading in bad faith or for improper purpose. Schramek v Jone 161 F.R.D. 119 120 (D. Fla 1995) emphasis added; quoting Didie v Howes 988 F,.2d 1097 (11th Cir 1993). Other courts have also held that Rule 11 sanctions are applicable when a signed paper is submitted to the court under the aforementioned conditions. See e.g. Burnette v Godshell 828 F. Supp 1439 (N.D. Cal 1993). This Circuit too has held that when an attorney or an unrepresented party submits a pleading motion or other paper to a federal court, his signature constitutes a certification that he has read it and formed a belief after reasonable inquiry that it is 1) well grounded in fact 2) warranted existing law or a good faith argument for the extension, modification or reversal of existing law, and 3) it is not interposed for any improper purpose such as t harass or to cause unnecessary delay or needless increase in the cost of

litigation. Rule 11 states that when a pleading, motion or other paper violates this rule the court may impose sanctions. See Hoover 774 F. Supp at 64-65 quoting LeFebvre v Commissioner 830 F.2d 417, 420 (1st Cir 1987). The panel goes on to state that while pro se pleadings are viewed less stringently, court decisions and Rule 11 itself indicate that the Rule applies to represented and pro se parties alike. Id. See also Merrigan v Affiliated Bankshares of Colorado Inc., 775 F. Supp 1408 (D. Colo 1991), aff'd 956 F.2d 278, cert den 506 U.S. 823 (1992). Subsequent to this Decision and Oder Plaintiff cannot now deny that her behavior implicated many of the factors listed in the case in its entirety, this instant complaint is part of a pattern of activity that includes multiple lawsuits and complaints arising from the same nexus of fact, her multiple and disparate filings have had a negative effect on this and other Court's efficient administration of justice. Though Defendants have been wronged by Plaintiff, and though district courts have the power to sanction a plaintiff notwithstanding that there ultimately proves to be a lack of subject matter jurisdiction over the case, See Willy v Coastal Corp 915 F.2d 965,967 (5th Cir 1990); Wojan v General Motors Corp 851 F.2d 969, 972 (7th Cir 1988); Orange Production Credit Assoc. V Frontline Ventures Ltd., 792 F.2d 797, 801 (9th Cir 1986), this Court is also realistic in recognizing the pro se status of Plaintiff in this case; and therefore agrees with Judge Martin that to actually sanction Plaintiff is not appropriate at this juncture., However, Plaintiff has now been effectively warned-further pursuit of this matter will result in sanctions as described above. The case ends here. Lastly, it is worthy of note that Defendants are not without remedy should Plaintiff choose to pursue her action against them in state court. This case is tailor-made for application of the Strategic Litigation Against Public Participation Act (anti-SLAPP statute), R.I. Gen Laws 9-33-1 et seq (2005). Not only would the statute provide immunity to defendants for their testimony before the Board,

it would also provide for costs, reasonable attorney's fees and even punitive damages should a court find that Plaintiff's claims were frivolous or brought with the intent to harass. R.I.Gen Laws 9-33-2 (d) (2005). Plaintiff should she decide to continue does so at her own peril, facing certain sanctions in this Court and possible costs, attorney's fees and punitive damages in state court.

CONCLUSION

The Defendants' Motions to Dismiss are hereby granted in each cse and the Cinquegrana's Motion for Rule 11 Sanctions against the Plaintiff is denied.

The Clerk shall forthwith enter judgment for the Defendants in each case to the effect that this Court does not have subject matter jurisdiction.

It is so ordered.

/s/ Ronald R. Lagueux
Senior Judge
June 8, 2005

APPENDIX B

BIAS AND PREJUDICE

The Decision and Order by Senior Judge Ronald Lagueux reads at page in pertinent part, " However, she goes further still, accusing the Browns of actually abusing their children, and essentially that their testimony before the Board was some form of cover-up for the alleged abuse."

This statement is inaccurate and embodies a bias and prejudice which cannot be tolerated by our Judicial system. The Report by Dr Mills to DCYF on October 5, 1999 reads in pertinent part, " * Caller (Dr Mills) Um, I just had a concern over a DCYF worker... Alright, Just the fact that someone who that works there has some children and a wife that seem to have an awful lot of fractures and injuries. ...Then Erin Brown

whose about I'd said she was born in about 83. So she would be about what 16.

*Operator : Yea 15-16.

*Caller: I know They just seemed to be very close together. And....I mean it could just be coincidence. ... No and kids fall out of beds and there are nears SDS (sic)... But it just... I don't know it just didn't seem right. An awful lot of them. ...They must be accident prone kids.

*Operator: Well. It would be nice to think that but we'll see..."

The above report clearly reveals that Dr Mills did not accuse the Browns of actually abusing their children but Dr Mills was showing " concern" about a lot of injuries and offered possible explanations as to being resultant from coincidence, accident prone children and the like.

This same type of activity by the State official(s) both at the Board and adopted by the State Superior Court in Mills' license case, took place when they falsely alleged that Mills committed unprofessional conduct when making the above call to DCYF about ONLY a girl who had attained the age of 18-19 years. This again is clearly inaccurate as the call was made about a 15-16 year old girl (mother and sibling sister both also having fractures and other injuries).

STATE ACTORS

Again it is inaccurate to conclude that the Defendants Brown and Cinquegrana were not state actors. Complaints can be made to the State Medical Boards by private individuals. These complaints are to be forwarded to physicians in unaltered form. This did not happen in Mills' license case. Testimony of Deborah Cinquegrana on October 5, 2000 reads in pertinent part, " Q: Didn't you write out a handwritten affidavit before that? A: Yes, and I brought that in with me.... Q: Do you recall who you discussed it with? A: I believe it was him. Q: Is that Mr McIntyre? A: Yes. Q: The gentleman in the

green blue shirt? A: Yes gentleman in the red tie. HO: The record will reflect that that is Bruce McIntyre." Q: Did they then type this affidavit the same day? A: Yes. (not the handwritten complaint of defendant)

As a state official participating with the Defendant this cannot be construed as anything but, " private parties acting with state official and state actor."

FEDERAL JURISDICTION

Though the defendants were state actors or private parties working with state officials, this case was not previously heard in a state court. This case was not brought after "failing in state court," in Mills' license case. This case(s) was brought prior to any decision in State court on Mills' license and is about issues that were not even addressed in Mills' license case. Issues of signing medical releases for confidential health care information was not why the state suspended Dr Mills, Browns wire-tapping Mills at her office is not an issue addressed in Dr Mills' license suspension by the State, Brown's false allegation that Mills had "removed or stolen" NEAR SIDS records which Dr Mills herself has never seen (never "lost in the Navy" as Brown claimed but remain on microfiche at Bridgeport Hospital) was not the issue in Mills' suspension of her license. It is not as the court concludes, " the testimony of the Defendants before the Medical Board," for which this complaint is brought. It is action brought because of the defendants' violations of Federal Laws.

In Wyatt v Terhune, 315 F.3d 1108, 1114 (9th Cir 2003), cert den Alameida v Wyatt, 124 S. Ct. 50 (2003) "We have held that taking judicial notice of findings of fact from another case exceeds the limits of Rule 201."

To avoid the issues for which this complaint was brought, the Court simply inaccurately states at page 23 in

Decision and Order that, " ...instant complaint is part of a pattern of activity that includes multiple lawsuits and complaints arising from the same nexus of fact... having a negative effect on this and other Court's efficient administration of justice. Brown falsely alleges it was "bizarre" for Dr Mills to be concerned about benzene and gasoline vapors in her office building. It was not efficient administration of justice for the State Court to disregard PC00229 Whitehouse v Speedy Oil, take Brown's false claims and in part write, "....Mills herself testified DEM never confirmed the contamination to the building."

Thus this Court does not have the authority to take judicial notice of facts stated in other court proceedings, in ruling in this action.. This is a violation of Dr Mills' constitutional rights to due process.

Supreme Court, U.S.
FILED

06-496 AUG 2 - 2006

OFFICE OF THE CLERK

(2)

No.

SUPREME COURT OF THE UNITED STATES

GERALDINE MILLS, M. D.
Appellant,

v.

STEVE BROWN and JOYCE BROWN
Appellees.

GERALDINE MILLS, M.D.
Appellant,

v.

DEBORAH CINQUEGRANA and BRIAN CINQUEGRANA
Appellees.

On Petition For Writ of Certiorari
To The United States Court of Appeals
for The First Circuit

SUPPLEMENTAL APPENDIX

October 5, 2006

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APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Geraldine Mills, M.D.,
Plaintiff
v. C.A. 03-422L
Steve Brown and
Joyce Brown,
Defendants

Geraldine Mills, M.D.,
Plaintiff
v. C.A. 03-457L
Deborah Cinquegrana and
Brian Cinquegrana,
Defendants.

MEMORANDUM AND ORDER

Before the court in each of the above entitled actions are two motions filed by Geraldine Mills, M.D. ("Plaintiff"): (1) Plaintiff's Motion to Amend Complaint Pursuant to Federal Rules of Civil Procedure 15 a-c ("Motion to Amend") and (2) Motion to Submit Portions of Medical Records as Evidence in Support of Plaintiff ("Motion to Submit Records")(collectively the "Motions"). Although the cases have not been consolidated, they are factually related and involve the same Plaintiff and similarly situated Defendants, and the Motions present the same issues. Therefore, the court addresses the four Motions in a single Memorandum and Order. Where necessary, the court differentiates between the two cases by referring to Geraldine

Mills, M.D. v. Steve Brown and Joyce Brown, CA 03-422L as "Brown" and to Geraldine Mills, M.D. v Deborah Cinquegrana and Brian Cinquegrana CA 03-457L as " Cinquegrana." For the reasons stated herein, the Motions are denied.

I. Travel

A. Brown

Plaintiff filed her complaint on September 18, 2003. See Complaint (Document #1). Defendants Steve Brown and Joyce Brown (the "Browns") moved to dismiss the Complaint on December 22, 2003, for lack of jurisdiction over the subject matter. See Motion to Dismiss (Document # 2). On December 30, 2003, Plaintiff filed an objection to the Motion to Dismiss. See Plaintiff's Objection to Motion to Dismiss (Document # 3). On that same date, Plaintiff also filed the Motion to Amend (Document # 4) and the Motion to Submit Records (Document # 5). Plaintiff filed on January 5, 2004, a motion to allow her to exceed the court's page limitations to Memorandums to Amend to Dismiss to More than Five and Ten Pages ("Motion to Expand Attachments") (Document # 6). This motion was granted by Senior Judge Ronald R. Lagueux on January 6, 2004, See Document # 7 and Plaintiff filed the additional exhibits on January 27, 2004, see Document # 9. On January 26, 2004, this Magistrate Judge, noting the absence of a proposed amended complaint from the Motion to Amend issued an order, giving Plaintiff fifteen days within which to file a proposed amended complaint. See Order regarding Motion to Amend (Document # 8). The Order specifically directed Plaintiff's attention to the requirements of Fed. R. Civ P. 8 (a) and 8 (e) (1). See id Plaintiff submitted her Proposed Amended Complaint (" Brown PAC") on February 9, 2004.

B. Cinquegrana

In the Cinquegrana action, Plaintiff filed her complaint on October 3, 2003. See Complaint (Document # 1). Defendants Deborah Cinquegrana and Brian Cinquegrana (the

"Cinquegranas") responded on December 16, 2003, by moving for dismissal, see Motion to Dismiss Brought Pursuant to Federal Rules of Civil Procedure 12 (b)(1) ("Motion to Dismiss") (Document #3), and for sanctions, see Motion for Sanctions Pursuant to Federal Rules of Civil Procedure Rule 11 (Document #2). On December 29, 2003 Plaintiff filed the Motion to Submit Records (Document #5), the Motion to Amend (Document #6) and an objection to the Motion to Dismiss, see Plaintiff's Objection to Motion to Dismiss (Document # 7). Plaintiff filed a Motion to Expand Attachments to Memorandum Amend (sic) (Document #8) on January 5, 2004, which was granted by Judge Lagueux on January 8, 2004, see Document # 9 and Plaintiff filed additional exhibits on January 27, 2004, see Document # 13. As inn Brown, Plaintiff failed to submit a copy of her proposed amended complaint with the Motion to Amend, and the court issued an identically worded order directing her to do so within fifteen days. See Order Regarding Motion to Amend (Document # 12) Plaintiff submitted her Proposed Amended Complaint ("Cinquegrana PAC") on February 9, 2004. On February 18, 2004 the Cinquegranas field a response to the PAC, See Defendants Additional Argument and Response as to Plaintiff's Motion to Amend (Document # 14).

C. March 8, 2004 Hearing

A hearing was held on March 8, 2004 on the Motions to Dismiss (Brown Document #2, Cinquegrana Document # 3), the Motions to Amend (Brown Document #4, Cinquegrana Document #6), the Motions to Submit Records (Brown Document #5, Cinquegrana Document #5), and the Motion for Sanctions (Cinquegrana Document #2). At that time, Plaintiff conceded that the Complaint in neither case complied with Rule 8, and she requested that her Motions to Amend be granted. After listening to argument, the Court stated that it would take the matters under advisement and issue a written decision. See Order Staying Discovery (Brown Document # 11,

Cinquegrana Document #16).

II. Facts

For purposes of this Memorandum and Order the court assumes the facts as stated in the Proposed Amended Complaints ("PACs") are true and construes the allegations liberally in deference to Plaintiff's pro se status. The PACs contain 52 separately numbered paragraphs, some of which have multiple subparagraphs. In essence, Plaintiff a physician alleges that the Browns and the Cinquegranas ("Defendants") file false complaints against her with the Rhode Island Board of Medical Licensure and Discipline (the "Board"), see Brown PAC 3, 6; Cinquegrana PAC 3,6, that they testified falsely at a hearing before the Board, see Brown PAC 3, 6, 28; Cinquegrana PAC 3,6, 28 and that they caused Plaintiff to lose her medical practice, see Brown PAC 7, 8 Ciniquegrana PAC 7,8 and to suffer loss of reputation and income, see Brown PAC 5, 20 Cinquegrana PAC 5,20. Plaintiff specifically charges Defendants with interfering with the contractual relationship which existed between Plaintiff and her patients, see Brown PAC 3; Cinquegrana PAC 3 (Count I); 2) false light invasion of privacy," Brown PAC 11; Cinquegrana PAC 11 (CountII); 3) " interference with advantageous relations," Brown PAC 15;Cinquegrana PAC 15 (Count III); 4) "disparagement," Brown PAC 23; Cinquegrana PAC 23 (Count IV); 5) " malice and intent to harm" Brown PAC 30; Cinquegrana PAC 30 (CountV) and 6) prima facie tort," Brown PAC 48;Cinquegrana PAC 48 (Count VI). Plaintiff seeks "compensatory damages for the harm to her reputation and the loss of her business, punitive damages for pain and suffering, costs any applicable attorney's fees and such further other relief as this Court deems fitting and proper..." Brown PAC, Prayer for Relief; Cinquegrana PAC, Prayer for Relief.

III. Pro Se Status

Plaintiff is proceeding pro se, and therefore her pleadings are held to a less stringent standard than those drafted by lawyers. See Haines v Kerner 404 U.S. 519, 520, 92 S. Ct. 594, 596, 30 L. Ed. 2d 652 (1972). They are to be read with an extra degree of solicitude." Rodi v Ventetuolo, 941 F. 2d 22, 23 (1st Cir. 1991). At the same time, a plaintiff's pro se status does not excuse her from complying with procedural rules. See Instituto de Educacion Universal Corp v U.S. Dep't of Educ. 209 R. 3d 18, 23 n.4 (1st Cir 2000).

IV. Motions to Amend

Fed. R. Civ. P. 15 (a) provides that leave to amend a complaint " shall be freely given when justice so requires." Maine State Bldg & Constr Trades Council AFL-CIO v U.S. Dep't of Labor, 359 F. 3d 14, 19 (1st Cir 2004). (quoting Rule).However, leave need not be granted if it would be futile. See Interstate Litho Corp v Brown, 255 F. 3d 19, 25 (1st Cir 2001). Here it is clear that the claims alleged in the PACs are barred for three reasons. First because of the Rooker-Feldman doctrine, this court is without subject matter jurisdiction. Second, Plaintiff's claims that Defendants violated her constitutional rights fail because Defendants are not state actors. Third, Defendants are protected by absolute immunity. The court discusses each of these reasons below.

A. Rooker- Feldman

The Rooker-Feldman doctrine derives from two Supreme Court decisions, Rooker v Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L.Ed 362 (1923) and District of Columbia Court of Appeals v Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L.Ed 2d 206 (1983). The doctrine " provides that lower federal courts do not have subject matter jurisdiction to review state court civil decisions. Plaintiffs must instead seek review through the state court system and, if necessary petition the United States Supreme Court for a writ of certiorari." Edwards

v Illinois Bd of Admissions to the Bar, 261 F. 3d 723, 728 (7th Cir 2001) (citations omitted); see also Picard v Members of Employee Ret Bd of Providence, 275 F. 3d 139, 145 (1st Cir 2001) ("describing the contours of this jurisdictional doctrine"); Sheehan v Marr 207 F. 3d 35, 39 (1st Cir 2000) (explaining the doctrine). "The Supreme Court has applied the Rooker-Feldman jurisdictional bar to two categories of claims, those (1) actually decided by a state court, see Rooker v Fid Trust Co. 263 U.S. 413, 415, 44 S. Ct 149...or 2) 'inextricably intertwined' with a state court judgment, see Dist of Columbia Ct of App v Feldman 460 U.S. 462, 48 [3] n.16 103 S. Ct. 1303..." Pittsburg County Rural Water Dist No 7 v. City of McAlester, 358 F.3d 694, 707 (10th Cir 2004). "Here, Plaintiff's constitutional claims inextricably intertwined, Feldman 460 U.S. at 483 n. 16, 103 S. Ct at 1316 n. 16, with the state superior court's upholding of the Board's decision to suspend Plaintiff's medical license, see Mills v Nolan No PC 01-4153, 2003 WL 22790706 (R.I. Super. Ct Nov 13, 2003). This 'inextricable intertwining" is apparent from a comparison of the allegations of the PACs and the findings of the superior court. Plaintiff alleges that she " was NOT allowed her due process and equal protection of the law in that she was not allowed to submit supporting evidence to show that the claims made by the Defendants were false allegations." Brown PAC 6e Cinquegrana PAC 6 j. The state superior court found that Plaintiff " had numerous opportunities to call witnesses on her behalf and submit evidence to substantiate her claims. At no time during the proceedings did (Plaintiff) attempt to do so." Mills v Nolan 2003 WL 22790706 at 17. Plaintiff asserts that she was not afforded due process and that the " record is totally devoid of supporting evidence....," Brown PAC 35; Cinquegrana PAC 35, presumably referring to evidence before the Board which would support the complaints filed against her by Defendants. The state superior court decision contains repeated findings that there was "substantial evidence" in the

record to support the Board's action. See Mills vs Nolan 2003 WL 22790706 at 11-19.

Constitutional claims which are "inextricably intertwined' with state court proceedings, impermissibly invite the federal district court, 'in essence,' to review a final state court decision. Lower federal courts are without subject matter jurisdiction to sit in direct review of state court decisions." Wang v New Hampshire Bd of Registration in Med., 55 F. 3d 698 703 (1st Cir 1995) (citation omitted). "This is true, even though the state court judgment may have been erroneous." In re Sun Valley Foods Co., 801 F.2d 186, 189 (6th Cir 1986). This lack of jurisdiction is not altered by claims that the state judgment is unconstitutional, see Schneider v Colegio de Abogados de Puerto Rico 917 F. 2d 620 628 (1st Cir 1990), or that the Plaintiff's constitutional rights were violated in the state proceeding, see Musslewhite v State Bar of Texas 32 F. 3d 942,944,947 (5th Cir 1994); Tidik v Ritsema 938 F. Supp 416, 424 (E.D. Mich 1996) (holding that district court had no jurisdiction to consider plaintiff's claims that his constitutional rights were violated in state divorce proceeding). To apply 'inextricably intertwined" standard a federal district court asks "whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment." Pittsburg County Rural Water Dist. No 7 v City of McAlester 358 F. 3d 694 707(10th Cir 2004); see also Edwards v Illinois Bd of Admissions to the Bar, 261 F. 3d 723,729 (7th Cir 2001) (same). If the injury is due to the state court judgment then the federal court lacks subject matter jurisdiction. See id If not then the Rooker Feldman doctrine does not bar the exercise of jurisdiction. See id. Here the injury which Plaintiff alleges is that she "lost her business and her ability to practice Medicine as a result of the intentional acts and conduct of Defendants." Brown PAC 51 Cinquegrana PAC 51. Although Plaintiff attributes this alleged injury to Defendants, it is clear that it resulted from the Board's action in suspending her

medical license and the superior court's upholding of that action. Cf Manley v City of Chicago236 F. 3d 392, 397 (th Cir 2001) (upholding dismissal of terminated police officer's lawsuit because if a federal court were to grant him the relief he requested, it would need to review the state courts' rulings because his injury stemmed directly from the state court judgment upholding the administrative board's decision). It is true that Defendants' complaints prompted the Board's investigation and that their testimony provided the basis for many of the Board's findings. However, those circumstances do not make the injury distinct from the state court judgment. Thus this court lacks subject matter jurisdiction over the claims pled in the PACs.

B. Defendants Are Not State Actors

Despite the court having specifically directed Plaintiff's attention to the requirement that each PAC contain a " short and plain statement of the grounds upon which the court's jurisdiction depends, " Order Regarding Motion to Amend at 1 n.1 (Brown Document # 8 Cinquegrana Document # 12) she has alleged only that the Fourteenth Amendment provides grounds " upon which thi[s] court's jurisdiction depends," Brown PAC 32; Cinquegrana PAC 32, and cites no statute which allows this court to entertain these actions. However, the court will assume from her reference to the Fourteenth Amendment that Plaintiff is relying upon 28 U.S.C. 1331 as providing authorization for this court to exercise jurisdiction. See 28 U.S.C. 1331 (" The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.") "The Fourteenth Amendment, while guaranteeing certain rights, provides no vehicle for redress of violations of these rights. An enabling statute, 42 U.S.C. 1983, provides means for bringing suit for alleged constitutional violations. A 1983 claim may, however, only be brought against one acting under color of state law." Okropirirdze v St Jude Childrens' Research Hosp. Civ A. No

95-254, 1995 WL 339021, at 2 (E.D. Pa. June 1, 1995); see also Al3exis v McDonald's Rests. Of Massachusetts, Inc., 67 F. 3d 341, 351 (1st Cir 1995) ("A section 1983 claim does not lie absent state action.").

There are two components to the "state action requirement. First, the deprivation must be shown to have been caused by the exercise of some right or privilege created by the state, or by a rule of conduct imposed by the state, or by a person for whom the state is responsible. Casa Marie[, Inc. V. Superior Court of P.P.], 988 F.2d[252,] 258 [1st Cir 1993]. Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. Id. Where a private individual is a defendant in a section 1983 action, there must be a showing that the private party and the state actor jointly deprived the private party of her civil rights. Wagenmann v. Adams 829 F.2d 196, 209 (1st Cir 1987); Casa Marie 988 F.2d at 258-59; see also Dennis v Sparks 449 U.S. 24, 27-28, 101 S. St. 183, 186-87, 66 L.Ed 2d 185 (1980) ("Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of 1983 actions.").

Alexis, 67 F.3d at 351. Thus a 1983 action may not be brought against private actors. See Brown v Newberger, 291 F. 2d 89,93 (1st Cir 2002). The test for determining whether one can be considered a state actor is: (1) whether there was an elaborate financial or regulatory nexus between [defendants] and the government...which compelled [defendants] to act as they did., (2) an assumption by [defendants] of a traditionally public function, or (3) a symbiotic relationship involving the sharing of profits. Brown v. Newberger 291 F.3d at 93 (quoting Ponce v. Basketball Fed'n of the Commonwealth of Puerto Rico 760 F.2d 375, 377 (1st Cir 1985)) (second alteration in original). Applying this test it is apparent that the Browns and the Cinquegranas are not state actors. There is no elaborate financial or regulatory nexus between them and the State of

Rhode Island. They did not assume a traditionally public function, and there is no symbiotic relationship between them and the State involving the sharing of profits. The mere fact that Mr. Brown is employed by the Rhode Island Department of Children, Youth, and Families ("DCYF"), see Mills v Nolan 2003 WL 22790706 at 5 does not create such a nexus, cf. Brown v Newberger 291 F. 3d at 93 (holding that social worker who filed a complaint of suspected child abuse pursuant to state law did not create the kind of regulatory nexus which would justify treating her as a state actor.) Thus Defendants did not act under color of state law when they filed their complaints with the Board. See Auster Oil & Gas, Inc v Stream 764 F.2d 381, 388 (5th Cir 1985) ("A private party does not act under color of state law when she merely elicits but does not join in an exercise of official state authority."); Tarkowki v Robert Bartlett Realty Co. 644 F.2d 1204,1208 (7th Cir 1980) ("A private person does not conspire with a state official merely by invoking an exercise of the state official's authority."); Couloute v Mercury Mortgage Inc., No Civ 3:01CV1823 (PCD), 2001 WL 34315008, at 2 (D. Conn Dec. 13, 2001) (holding that defendants who filed a complaint in state court and received a favorable judgment were not "clothed with the authority of state law"); Serbalik v Gray 27 F. Supp 2d 127, 132 (N.D.N.Y. 1998) (holding that neighbors who filed complaint with Town regarding plaintiff's alleged failed septic system and who loaned bucket and hose to Town inspector, watched him perform test, observed the results, and reported their observations to him w4re not engaged in " state action"); cf. Andresen v Diorio, 349 F.3d 8, 13 (1st Cir 2003)("[I]t is settled that the fact that private parties give the police information on which official action is then taken does not by itself convert the private parties into state actors."); Daniel v Ferguson, 839 F.2d 1124,1130 (5th Cir 1988) (holding that even if private defendant did provide police with false information, the state action requirement for 1983 liability was not satisfied

since "[p]olice reliance in making an arrest on information given by a private party does not make the private party a state actor);id. (" The execution by a private party of a sworn complaint which forms the basis for an arrests, is without more not sufficient to make that party's acts state action."). (internal quotation marks omitted); Grow v Fisher 523 F.2d 875, 879 (7th Cir 1975) (finding that private persons who were complainants and witnesses in criminal prosecution were not acting under color of state law). Similarly, Defendants did not act under the color of state law when they testified before the Board. See Briscoe v LaHue 460 U.S. 325, 329-30, 103 S. Ct. 1108, 1112-13, 75 L.Ed 2d 96 (1983) (" [W]hen a private party gives testimony in open court in a criminal trial that act is not performed under color of law.") (internal quotation marks omitted); Slotnick v Garfinkle 632 F.2d 163, 166 (1st Cir 1980) ("[P]articipation by a private party in litigation without more does not constitute state action, a necessary precondition to a section 1983 claim.") (citations omitted). Plaintiff's allegations that Defendants acted with malice and the intent to harm her, see Brown PAC 13, 19, 30, 50, 52 Cinquegrana PAC 13, 30, 50, 52 do not alter the above determinations, see Johnson v Miller 680 F.2d 39, 40 (7th Cir 1982) (holding that the filing of a criminal complaint with the police is the act of a private citizen and that while a groundless complaint may violate state tort law, it does not alter the private character of the complainant); Couloute v Mercury Mortgage Inc., No Civ 3:01CV1823 (PCD), 2001 WL 34315008, at 2 (D. Conn. Dec 13, 2001) ("Section 1983)...preserves constitutional rights from infringement by persons who act under federal or state authority, not private citizens who commit wrongful acts, however wilful and malicious they may be."). Because Defendants were not acting under color of state law, an action against them pursuant to 1983 is barred.

C. Immunity

Witnesses are absolutely immune for testimony in judicial

proceedings even if the statements made are false and made with malice. See Briscoe v LaHue 460 U.S. 325, 330-32, 103 S. Ct 1108, 1113-14, 75 L. Ed 2d 96 (1983); Reid v State of New Hampshire 56 F. 3d 332, 337 n.11 (1st Cir 1995) (noting that " all witnesses, including those who five perjured testimony are absolutely immune from civil suit under 1983). This immunity extends " to any hearing before a tribunal which perform[s] a judicial function." Burns v Reed 500 U.S. 478,490 111 S. Ct 1934, 1941, 114 L. Ed. 2d 547 (1991) (internal quotation marks omitted). Thus, witnesses involved in quasi-judicial proceedings enjoy the same absolute immunity as witnesses in judicial proceedings. See Richter v Conner No. 93-1433, 1994 WL 118011, at 7 (4th Cir Apr 8, 1994) (unpublished table decision) (holding that witnesses who testified against physician at hearing before Board of Medicine " are absolutely immune from civil suit for the purported false testimony"); Rohrbach v Charbonneau No Civ. 99-282- P.C., 2000 WL 76030 at 7 (D. Me. Mar 1, 2000) (finding that hearing before Board of Zoning Appeals is a quasi-judicial proceeding and that witnesses enjoyed absolute immunity); Laden v City of Philadelphia, Civ A. No 92-0697, 1992 WL 129784, at 1 (E.D. Pa. June 8, 1992) (stating that witness who testified before licensing board was entitled to absolute immunity for his testimony); Zanders v Pinion, Civ. A. No. 90- 0385, 1991 WL 175557, at 3 (E.D. La., Aug. 23, 1991) (" A witness before a parole board enjoys absolute immunity from liability for his or her testimony before the board.") (citing Johnsoon v Kegans 870 F. 2d 992, 997 (5th Cir 1989). The United States Court of Appeals for the First Circuit has held that the doctrine of quasi-judicial immunity bars the recovery of monetary damages from staff members of a state medical board for their actions in a proceeding which resulted inn the revocation of a physician's license to practice medicine. See Bettencourt v Bd. Of Registration in Med. Of the Commonwealth of Massachusetts, 904 F.2d 772, 784-85 (1st Cir 1990). Because of the high public

interest in having an effective disciplinary and regulatory system for physicians, and the need to have persons testify freely without fear of retribution, this court holds that witnesses who testify before the Board are entitled to absolute immunity. Cf Watterson v. Page. 987 F. 2d 1, 9 (1st Cir 1993) (" [A]11 witnesses at judicial proceedings have an absolute immunity from damages liability based on their testimony."). Accordingly Plaintiff's PACs are also futile because Defendants are protected by absolute immunity for their actions in filing complaints and testifying against Plaintiff.

D. Summary Re Motions to Amend

In summary, there is no basis for this court to exercise jurisdiction over Plaintiff's PACs. The claims asserted therein are "inextricably intertwined" with the state superior court decision upholding the Board's action and the Rooker-Feldman doctrine prohibits this court from entertaining them. The constitutional claims she asserts in the PACs fail because Defendants were not acting under color of state law. In addition, Defendants are protected by absolute immunity from Plaintiff's claims. Accordingly, the Motions to Amend are hereby DENIED.

E. Motions to Submit Records

The court has reviewed the material contained in the Motions to Submit Records. There is nothing contained in those material which affects the court's findings that Plaintiff's claims are barred by the Rooker-Feldman doctrine, that Defendants are not state actors, and that Defendants have absolute immunity for the acts about which Plaintiff complains. Therefore, the Motions to Submit Records are denied.

So Ordered.

Enter:
/s/ David L. Martin
United States Magistrate Judge
April 21, 2004

By Order:
/s/ Mark Sauciu
Deputy Clerk